TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

~~No. 1423~~.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS ET AL., APPELLANTS,

vs.

THE UNITED STATES.

FILED OCTOBER 26, 1888.

~~No. 1457~~.

GEORGE ROMNEY, HENRY DUNWOODY, JAMES WATSON, AND JOHN CLARK, APPELLANTS,

vs.

THE UNITED STATES.

FILED DECEMBER 21, 1888.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1423.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTERDAY SAINTS, ET AL., APPELLANTS,

vs.

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APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

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1 *Complaint.*

In the Supreme Court of the Territory of Utah, of —— Term. In Equity.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants. } No. —.

To the judges of the supreme court of the Territory of Utah:

The plaintiff, United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who brings this suit by direction of Augustus H. Garland, Attorney General of the United States, brings this bill of complaint against the late corporation known and claiming to exist as the Church of Jesus Christ of Latter-Day Saints and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of the said corporation aforesaid, which was or claimed to be and exercised the
2 powers of a corporation created and organized and existing under and by virtue of an ordinance of the provisional State of Deseret re-enacted and ratified by the Legislature of Utah; and therefore the plaintiff complains and says:

First. That on the 8th day of February, 1851, the assembly of the so-called State of Deseret, which afterwards was organized as the Territory of Utah, passed an ordinance incorporating as a corporation the Church of Jesus Christ of Latter-Day Saints, which ordinance was afterwards, on the 19th day of January, in the year 1855, re-enacted by the Legislature and approved by the Governor of the Territory of Utah, a copy of which ordinance as re-enacted as aforesaid is hereto attached, marked "Exhibit A," and which the plaintiff makes a part of this bill.

Second. That John Taylor, on and immediately before the 19th day of February, 1887, was and had been trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Herber J. Grant, and John W. Taylor—the twelfth assistant, is to your plaintiff unknown, whose name when discovered the plaintiffs ask leave to make a party hereto—were the assistant trustees of the corporation of the Church of Jesus Christ of Latter-Day Saints.

Third. That by the act of incorporation stated in paragraph one of this bill the corporation thereby created was authorized to hold and occupy real and personal estate, with such other powers as are stated in "Exhibit A" of the first paragraph, and by one trustee in trust and twelve assistant trustees, to receive, hold, buy,
3 sell, manage, and control the real and personal property of said corporation, as will more fully appear by reference to "Exhibit A," hereto attached.

Fourth. That under and by virtue of the said act of incorporation set forth in paragraph one of this bill the said corporation of the Church of Jesus Christ of Latter-Day Saints was organized and did buy, receive, acquire, and hold large amounts of real and personal property of great value in the Territory of Utah after the 1st day of July, 1862, the precise amount, value, or description of which the plaintiff is unable to state, but asks leave to prove; and the plaintiff alleges, on information and belief, that the value of the real estate is about two millions of dollars and of the personal property about one million of dollars, which said corporation held and owned on the 19th day of February, 1887, and which the defendants now, in violation of the laws of the United States, still claim to hold and own.

Fifth. That the corporation of the Church of Jesus Christ of Latter-Day Saints from its organization until the 19th day of February, 1887, was a corporation or association for religious or charitable purposes.

Sixth. That by virtue of the provisions of the third section of the act of Congress of the first day of July, 1862, re-enacted as section 1890 of the Revised Statutes of the United States, any corporation or association for religious or charitable purposes was forbidden to acquire or hold real estate in any Territory during the existence of the territorial government of greater value than fifty thousand dollars; that of the real estate held by the corporation of the Church of Jesus Christ of Latter-Day Saints on the 19th day of Feb-
4 ruary, 1887, as set forth in the third paragraph of this bill, more than fifty thousand dollars in value thereof has been acquired and held since the first day of July, 1862, which is not held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God or parsonage connected therewith or burial ground.

Seventh. That by virtue of the premises the real estate referred to and stated in paragraph fourth of this complaint, which on or before the 19th day of February, 1887, was owned and held by the corporation of the Church of Jesus Christ of Latter-Day Saints, was and is subject to escheat to the United States.

Eighth. That on the 19th day of February, 1887, the charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints was disapproved, repealed, and annulled by the Congress of the United States, and the said corporation was thereby dissolved, and all the real estate owned and occupied by it in excess of fifty thousand dollars, which was not on the 19th day of February, 1887, held and occupied as a building or ground ap-

purtenant thereto for the purpose of the worship of God or parsonage connected therewith or burial ground, was subjected to escheat to the United States.

Ninth. That the said corporation of the Church of Jesus Christ of Latter-Day Saints and the successor of the said John Taylor (whose name is to this plaintiff unknown), as trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, assistant trustees, the defendants, wrongfully and in violation of the laws of the United States, still claim to hold and do exercise
5 the powers which were held and exercised by the said corporation of the Church of Jesus Christ of Latter-Day Saints, as stated in paragraph first of this bill, and are unlawfully possessing and using the real estate referred to in the fourth paragraph of this bill, and are receiving and unlawfully applying to its and their own use the rents, issues, and profits thereof, and falsely and wrongfully claim the right to sell, use, and dispose of the same.

Tenth. That since the 19th day of February, 1887, there has been and is no person lawfully authorized to take charge of, manage, preserve, or control the property, real and personal, which, on or before the day and year last aforesaid, was held, owned, possessed, and used by the corporation of the Church of Jesus Christ of Latter-Day Saints, and by reason thereof all the said property as referred to in the third paragraph of this bill is subject to irreparable and irremediable loss and destruction.

Eleventh. That, as plaintiff is informed and believes, the aforesaid John Taylor, who is designated in the former part of this complaint as trustee in trust of aforesaid corporation, on the 25th day of July, 1887, died and departed this life, and as to his successor in office as said trustee in trust of said corporation plaintiff has no knowledge or information, but asks that when said successor's name is discovered he be made a party to this action.

The plaintiff therefore prays—

First. That the defendants may be required to full, true, and perfect answers to the premises in writing make, the oath of said defendants to said answers being hereby expressly waived.

Second. That a proper person may be appointed receiver
6 to collect and get in all of the outstanding debts and monies due to the said defendant corporation, to take possession of, manage, control, and collect the rents, issues, and profits from the real estate thereof; and that the defendant corporation, its officers and agents, be ordered forthwith to surrender and deliver up to such receiver all the assets, property, effects, and the possession of the real estate belonging to said corporation, and also all monies, notes, drafts, bills of exchange, checks, or other evidences of indebtedness due and owing to the said corporation, as well as all books of account, accounts, deeds, bonds, mortgages, certificates of stock, and papers of every nature belonging to said corporation; and that the said receiver may, under direction of this court, continue the management of this said business until the sale or other disposition can be

made thereof according to law under and by virtue of the order of the court.

Third. That a decree be made by this honorable court declaring the dissolution and annullment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints.

Fourth. That this honorable court may appoint a commissioner to select and set apart out of the real estate which was held and occupied by the corporation of the Church of Jesus Christ of Latter-Day Saints such real estate as may be lawfully held for religious uses out of the real estate heretofore held by the said corporation.

Sixth. That the court shall make such necessary orders and decrees and take such proceedings, from time to time, as may be just and equitable to wind up the affairs of the said corporation conformably to law and equity.

7 Sixth. For such other and further relief in the premises as the nature of the case may require and as to your honors may seem just and meet and according to equity and good conscience.

And may it please your honors also to grant unto the plaintiff the writ of subpœna of the United States of America, to be directed to the said defendants and to any confederate or confederates, when discovered, therein and thereby commanding them and each of them, at a certain day, under a certain penalty therein specified, personally to be and appear before your honors in this honorable court for and in behalf of the late corporation of the Church of Jesus Christ of Latter-Day Saints, and then and there to answer all and singular the premises and to stand to and abide such order and decree herein as to your honors shall seem meet and just and agreeable to good conscience and equity, and to grant to the plaintiff any other lawful appropriate process or orders to effect the appearance of the said defendants or any other person representing or authorized to represent the late corporation of the Church of Jesus Christ of Latter-Day Saints.

And the plaintiff will ever pray.

GEO. S. PETERS,
United States Attorney.

A. H. GARLAND,
Att'y Gen'l U. S.

8 EXHIBIT "A."

An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints. (Approved February 8, 1851.)

(550) SEC. 1. Be it ordained by the General Assembly of the State of Deseret, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein and which are known and distinguished as "The Church of Jesus Christ of Latter-Day Saints" are hereby incorporated, constituted, made, and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-

Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

(551) SEC. 2. And be it further ordained, That said body or church, as a religious society, may, at a general or special conference, elect one "trustee in trust" and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation, which trustee and assistant trustees, when elected or appointed, shall give bonds, with approved security, in whatever sum the conference may deem sufficient, for the faithful performance of their several duties, which said bonds, when approved, shall be filed in the general church recorder's office, at the seat of general church business, when said bonds are approved by said conference,
9 and said trustee and assistant trustees shall continue in office during the pleasure of said church; and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business, and when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well being of said church.

(552) SEC. 3. And be it further ordained, That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that such church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, conveniences, comfort, and control of said church and for the punishment or forgiveness of all offenses relative to fellowship according to church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association, domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: Provided, however, That each and
10 every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality and are not inconsistent with or repugnant to the Consti-

tution of the United States or of this State and are founded in the revelations of the Lord.

(553) SEC. 4. And be it further ordained, That said church shall keep at every full organized branch or stake a registry of marriages, births, and deaths free for the inspection of all members and for their benefit.

(554) SEC. 5. And be it further ordained, That the presidency of said church shall fill all vacancies of the assistant trustees necessary to be filled until superseded by the conference of said church.

(555) SEC. 6. Be it further ordained, That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property without the consent or approval of the trustee in trust of said church.

[Endorsed:] The United States *vs.* Late Corporation of Church of Jesus Christ of L. D. Saints *et al.* Complaint. Filed July 30th, 1887. E. T. Sprague, clerk.

11 In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants.

Having duly considered the complaint addressed to the judges of this court on behalf of the United States of America, presented by George S. Peters, the United States attorney for Utah Territory, wherein the plaintiff in this action asks, among other things, that the defendant herein be required to answer fully the matters set forth in said complaint; that a decree be made declaring the dissolution and annulment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints, a corporation organized under an act of the Governor and Legislative Assembly of Utah, approved January 19th, 1855, and that a proper person be appointed receiver to take possession of, collect, and manage all the assets, effects, accounts, evidences of indebtedness, and all property, real and personal, of every description of said corporation, and to control the same under the direction of this court until disposition thereof according to law is made, and that this court appoint a commissioner to select and set apart out of the real estate which was held and occupied by said corporation such real estate as may be held lawfully for
12 religious uses; and it appearing to this court that the above-mentioned complaint is in compliance with and conformity to section 17 of an act of Congress of the United States passed on the 19th day of February, 1887, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United

States in reference to bigamy, and for other purposes," approved March 22nd, 1882.

Now, on motion of George S. Peters, United States attorney, it is ordered, first, that the above-mentioned complaint be filed with the clerk of this court; second, that a writ of subpœna, running in the name of the United States of America, properly attested, be issued by the clerk of this court, directed to each of the defendants in this action, commanding them and each of them, under penalty of attachment in case of refusal or neglect to obey, on the 15th day of September, 1887, personally to be and appear before this court and then and there to answer all and singular the matters of said complaint and to stand and abide such order and decree as may be made by this court and shall be just and agreeable to equity, and let said subpœnas be served according to law; third, that the clerk of this court cause to be made publication of notice addressed to all persons who may have or claim to have any legal or equitable interest to or against the property and effects of said corporation or in any of the matters stated in said complaint of the presentation and filing of complaint herein, of the nature of the application therein made, of the purposes sought by and relief prayed for in the application, and of the time and place when and where the above-mentioned complaint is to be answered and heard, and let such notice further state that all objections to the above application and all claims of every description in the premises must be presented in this court on or
before the day fixed for the hearing of said complaint and
13 the answers thereto. Let this notice be published for a period of not less than thirty days in the Salt Lake Daily Tribune, a newspaper of general circulation throughout this Territory, published in Salt Lake city and county, in Utah Territory.

Dated this 30th day of July, 1887.

By the court:

C. S. ZANE, *Chief Justice.*
JACOB S. BOREMAN,
Associate Justice.

14 *Demurrer.*

In the Supreme Court of the Territory of Utah, of —— Term.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants. } No. —.

The above-named defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint

contained to be true in such manner and form as the same is therein set forth and alleged, do demur to the said bill of complaint, and for cause of demurrer show and allege—

1. That said supreme court of the Territory of Utah has no jurisdiction of or over said defendants or either of them or of the subject-matter of said action.

2d. That the acts of Congress of July 1st, 1862, and of March 3d, 1887, referred to in plaintiff's bill of complaint, or so much
15 of said acts as attempt or pretend to dissolve the said defendant corporation or to interfere with or limit its right to hold property or which attempt to escheat the same or to wind up its affairs, are unconstitutional and void.

3d. That said complaint does not state facts sufficient to constitute a cause of action.

4th. That the plaintiff has not in and by its said bill of complaint made or stated such a case as entitles it in a court of equity to any discovery from these defendants or either of them or to any relief against them or either of them as to the matters contained in the said bill of complaint or any of such matters, and that said bill of complaint does not contain any matter of equity whereon this court can ground any decree or give to the plaintiff any relief against these defendants or either of them.

Wherefore and for divers others good causes of demurrer appearing in the said bill of complaint the defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the
16 said bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JAMES O. BRODHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Attorneys and Counsel for Defendants.

I, Franklin S. Richards, one of the attorneys and counsel for the above-named defendants, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

FRANKLIN S. RICHARDS.

TERRITORY OF UTAH, }
County of Salt Lake, } *ss:*

I, Brigham Young, being first duly sworn, on oath do say that I am one of the defendants in the above-entitled action, and that the foregoing demurrer is not interposed for delay.

BRIGHAM YOUNG.

Subscribed and sworn to before me this 17th day of October, A. D. 1887.

[SEAL.]

JAMES JACK,
Notary Public.

[Endorsed:] Supreme court of Utah. The United States *v.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.* Demurrer. Filed Oct. 17, 1887. E. T. Sprague, clerk. I hereby acknowledge receipt of a copy of the within demurrer this 17th day of October, 1887. Geo. S. Peters, U. S. att'y.

17 MONDAY, *November 7th, A. D.*, 1887.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

* * * * * * *

In said above-entitled cause the demurrer to the bill of complaint therein was by the counsel of the respective parties, upon the arguments heretofore made, submitted and by the court taken under advisement.

18 MONDAY, *November 7th, A. D.* 1887.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

This day this cause came on to be further heard and for the appointment of a receiver herein, comformably to the former order of this court; and thereupon the court, being fully advised in the premises, hereby orders and adjudges that Frank H. Dyer, Esq., of the city of Salt Lake, in the said Territory of Utah, be, and he hereby is, appointed receiver of the defendant, The Late Corporation of the Church of Jesus Christ of Latter-Day Saints, and of all its debts and property, real, personal, and mixed, of every nature, kind, and description whatsoever, including any and all equitable interests which it may have to any thereof.

It is further ordered and adjudged that the said receiver shall proceed forthwith to collect and get in all of the outstanding debts and monies due to and personal property of the said late corporation, the Church of Jesus Christ of Latter-Day Saints, and take possession of, manage, control, and collect the rents, issues, and profits from the real estate thereof.

19

It is further ordered and adjudged that the said late corporation, The Church of Jesus Christ of Latter-Day Saints, defendant, and its officers, trustees, agents, and employees and each of them surrender and deliver up to said receiver all of the assets, property effects of every kind and nature, and the possession of the real estate belonging to the said late corporation, and also all monies, notes, drafts, bills of exchange, checks, or other evidences of indebtedness due and owing to the said late corporation, as well as all books of ac-

count, accounts, deeds, bonds, mortgages, certificates of stock, books and papers of every kind or nature whatsoever, belonging to the said late corporation, and for the purpose of collecting and gathering in said property and effects of the said late corporation and of managing and conducting said business the said receiver is hereby authorized and empowered to employ counsel and such other aid and assistance as he may deem proper and necessary for that purpose. He is also authorized and empowered to institute and maintain in his own name as such receiver such suit or suits and take such proceedings from time to time, in the courts of this Territory or elsewhere, as may be necessary to fully and effectually carry out the objects and purposes of this decree.

It is further ordered and adjudged that said receiver at the end of each month file with the clerk of this court an account under oath, with proper vouchers, of his doings and proceedings under this decree.

It is further ordered and adjudged that said Frank H. Dyer, before entering upon the discharge of his duties as such receiver, shall be sworn to faithfully perform the duties thereof and enter into an undertaking in due form of law to the clerk of this court and his successors in office in the sum of two hundred and fifty thousand dollars, with good and sufficient sureties to the clerk of this court, for the faithful and honest administration of this trust.

It is further ordered and adjudged that either party hereto or said receiver may apply from time to time to this court for further directions and orders herein as occasion may require.

From that part of the foregoing order naming Frank H. Dyer such receiver, Zane, chief justice, dissents.

TUESDAY, *November 8th, A. D.* 1887.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

This cause this day came on to be further heard, and it appearing to the court that William B. Preston, Robert T. Burton, and John R. Winder each claim an interest in a portion of the property in the bill of complaint mentioned, and that they are each and all proper parties to this cause, it is therefore ordered and adjudged that they, the said Wm. B. Preston, Rob't T. Burton, and John R. Winder, be, and they are hereby, made parties defendants herein, and that they be subpœnaed to appear and answer herein in accordance with law.

23 *Demurrer.*

In the Supreme Court of the Territory of Utah, of —— Term.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, William B. Preston, Robert T. Burton, and John R. Winder, Defendants. } No. —.

The above-named defendants, William B. Preston, Robert T. Burton, and John R. Winder, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to the said bill of complaint, and for cause of demurrer show and allege—

1. That said supreme court of the Territory of Utah has no jurisdiction of or over said defendants or either of them or of the subject-matter of said action.

24 2d. That the acts of Congress of July 1st, 1862, and of March 3d, 1887, referred to in plaintiff's bill of complaint, or so much of said acts as attempt or pretend to dissolve the said defendant corporation or to interfere with or limit its right to hold property or which attempt to escheat the same or to wind up its affairs, are unconstitutional and void.

3d. That said complaint does not state facts sufficient to constitute a cause of action.

4th. That the plaintiff has not in and by its said bill of complaint made or stated such a case as entitles it in a court of equity to any discovery from these defendants or either of them or to any relief against them or either of them as to the matters contained in said bill of complaint or any of such matters, and that said bill of complaint does not contain any matter of equity whereon this court can ground any decree or give to the plaintiff any relief against these defendants or either of them.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint the defendants do demur

25 thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JAMES O. BRODHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Attorneys and Counsel for Defendants.

I, Franklin S. Richards, one of the attorneys and counsel for the above-named defendants, hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

FRANKLIN S. RICHARDS.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, John R. Winder, being first duly sworn, on oath do say that I am one of the defendants in the above-entitled action, and that the foregoing demurrer is not interposed for delay.

JOHN R. WINDER.

Subscribed and sworn to before me this ninth day of November, A. D. 1887.

[SEAL.]

J. H. MOYLE,
Notary Public, Salt Lake County.

[Endorsed:] United States *vs.* Late Corporation of the Church of J. C., L.-D. S. *et al.* Demurrer of Preston Burton & Winder. Filed 9th Nov., 1887. E. T. Sprague, clerk. I hereby acknowledge service of a copy of the within pleading. Geo. S. Peters, U. S. att'y.

26 WEDNESDAY, *November 9th, A. D.* 1887.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

In this cause the newly made defendants, Wm. B. Preston, Rob't T. Burton, and John R. Winder, enter their appearance, by their counsel and attorneys, J. C. Brodhead, J. E. McDonald, F. S. Richards, and Le Grand Young, and file a demurrer to the bill of complaint herein, the same being based on same grounds as was the demurrer of the other defendants heretofore argued and submitted, and thereupon said demurrer of said last-named defendants was, by the respective parties, submitted to the court; thereupon the court, being fully advised in the premises, doth find that said demurrers and each of them are not well taken, and orders, adjudges, and decrees that said demurrers to said bill of complaint, both and each, be, and they are hereby, overruled, with leave to defendants to answer said bill, and the personal signatures of defendants to such answers are waived.

27 Thereafter the answers of said defendants, to wit, the separate answer of said late corporation, the joint and several answer of defendants, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, Geo. Teasdale, Heber J. Grant, and John W. Taylor, and the joint and several answer of Wm. B. Preston, Rob't T. Burton, and John R. Winder to the bill of complaint herein were filed.

28 In the Supreme Court of the Territory of Utah. June Term, 1887.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Defendants.

ZANE, *C. J.:*

The complainant filed in this court its bill in chancery under an act of Congress in force March 3rd, 1887. The bill prayed that a decree be made by this court forfeiting the charter and dissolving the corporation known as the Church of Jesus Christ of Latter-Day Saints, as well as for the appointment of a receiver of the assets of the corporation until disposition could be made thereof according to law, and for other relief. The motion for the appointment of a receiver is now submitted for our decision on the bill and the facts as stated in a stipulation entered into by the parties and filed in the case.

On the 8th day of February, 1851, the Assembly of the so-called State of Deseret, afterwards organized as the Territory of Utah, passed an ordinance incorporating the Church of Jesus Christ of Latter-Day Saints. After the organization of the Territory of Utah this ordinance was re-enacted January 19th, 1855, by the Legislature and approved by the Governor of the Territory. This is the charter in question. Its terms are as follows:

29 An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints.

SEC. 1. Be it ordained by the General Assembly of the State of Deseret, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein and which are known and distinguished as "The Church of Jesus Christ of Latter-Day Saints" are hereby incorporated, constituted, made, and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

SEC. 2. And be it further ordained, That said body or church, as a religious society, may, at a general or special conference, elect one "trustee in trust" and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation, which trustee and assistant trustees, when elected or appointed, shall give bonds, with approved security, in whatever sum the said conference may deem sufficient, for the faithful performance of their several duties, which said bonds, when approved, shall be filed

in the general church recorder's office at the seat of general church business, when said bonds are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said church; and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office at the seat of general church business; and when said bonds are filed and said certificates recorded said trustee and assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

SEC. 3. And be it further ordained, That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ, for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that said church does and shall possess and enjoy continually the power and authority in and of itself to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, convenience, comfort, and control of said church, and for the punishment or forgiveness of all offenses relative to fellowship, according to church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: Provided, however, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality and are not inconsistent with or repungent to the Constitution of the United States or of this State and are founded in the revelations of the Lord.

SEC. 4. And be it further ordained, That said church shall keep, at every fully organized branch or stake, a registry of marriages, births, and deaths free for the inspection of all members and for their benefit.

SEC. 5. And be it further ordained, That the presidency of said church shall fill all vacancies of the assistant trustees necessary to be filled until superseded by the conference of said church.

SEC. 6. Be it further ordained that no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property without the consent or approval of the trustee in trust of said church.

32 The purposes of the corporation, as indicated by the powers conferred upon it by this charter, are numerous and varied. Some of them, it is true, are expressed in vague terms, but the capacity is granted to act in various ways and to make laws and regulations with respect to very many subjects. The corporation is confined to no particular purpose. No precedent can be found for conferring upon a private corporation such a variety of capacities; some of them, it is believed, are above the reach of human laws.

The law-making power of the State, for the purpose of better government and for the public good, enacts charters conferring a portion of the powers entrusted to it upon the people of a city or village; others authorizing charitable, educational, or religious institutions, and others providing for various pursuits and enterprises. These artificial agencies are provided in order that the people may more conveniently and successfully co-operate for the good of all and for the advancement of human happiness.

The charter of a corporation should always specify the purpose for which the corporation is organized, and powers adapted to that purpose should be granted. If the corporation is to be a public one powers adapted to the regulation of conduct and to public purposes should be given, with such incidental capacity to do business as may be essential to such an organization and no more. It should never be allowed to engage in general business.

33 If a charter authorizes the organization of a company to acquire and operate a railroad, the power to engage in agriculture should not be granted also. So if a worshiping congregation should desire to purchase a lot of ground and to build a church and a parsonage and to employ a minister, the charter should authorize the corporation to do so, but should not confer upon such an organization powers adapted to municipal government or to the purchase and sale of real and personal property without limit, nor should such corporations engage in general business.

It is an accepted doctrine that the common weal demands that private corporations should be limited each to a particular and specified purpose; even when so limited they often acquire great influence. If the Legislature, by the instrumentality of the same charter, may authorize the organization of a company for all purposes; if the company may enter upon every field of enterprise and engage in every pursuit, and may also control human conduct by means of the powers of a municipal government, and at the same time may possess those of a religious corporation, such corporate influence will be manifested as never before.

The charter of the Church of Jesus Christ of Latter-Day Saints is most extraordinary in the extent of the authority it assumes
34 to confer upon, and in the number, the variety, and the scope of the powers it places in the hands of a religious body. It declares, in effect, that all the Mormon people who at the time of its enactment were or who might afterwards become residents of the Territory are a body corporate with perpetual succession. This corporation at the time of its organization embraced nine-tenths of the inhabitants of the Territory—many thousands of people. At

the present time it includes probably more than one hundred and twenty thousand, and if in the future people should continue to be gathered in from all quarters of the globe, as they have been in the past, this number at no distant day will reach a quarter of a million. The corporation extends over the whole Territory, including numerous congregations in various localities. At the head of this corporate body, according to the faith professed, is a seer and revelator who receives in revelation the will of the infinite God concerning the duty of man to himself, to his fellow-beings, to society, to human government, and to God. In subordination to this head are a vast number of officers of various kinds and descriptions, comprising a most minute and complete organization. The people comprising this organization claim to be directed and led by inspiration that is above all human wisdom and subject to a power above all municipal government—above all "man-made laws." These facts belong to history; therefore we have taken notice of them.

35 Upon such a religious organization as this unusual and extraordinary powers are conferred by this charter, such as the right of acquiring and disposing of real and personal property without limit and with exemption from taxation; the authority to solemnize marriage according to revelation; the continuous and inherent authority to make laws and "criterions" for the good order, safety, government, convenience, comfort, and control of the church, which is equivalent to saying the Mormon people; also for the punishment or forgiveness of all offenses relative to fellowship according to church covenants—that is to say, the church may impose or inflict any punishment if according to its covenants. What these covenants may be the public may not know.

Further, it is declared that the enjoyment of life in every capacity of public association, domestic happiness, and temporal expansion upon the earth may not legally be questioned. Here is a wide field of human conduct for a government to agree not to question. Human beings have the capacity to associate publicly for very many purposes, and such association may become disorderly and require legal control. In "domestic happiness" this church professes to believe is included polygamy. In the estimation of others domestic happiness might include some other practice injurious to society. In the same manner "temporal expansion" might take a direction requiring control.

36 This grant of power was followed by a provision that the laws and customs established should "relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithing, marriages, fellowship, or the religious duties of man to his Maker, and that the same support virtue and increase morality and are not inconsistent with or repugnant to the Constitution of the United States or of this State, and are founded in the revelations of the Lord.

The above terms, solemnities, sacraments, ceremonies, consecrations, and endowments may be polygamy and unlawful cohabitation in disguises; in fact, marriage is included in terms in the charter without specification of the kind of marriage. This is probably the first time that any Legislature committed the regulation of mar-

riage and tithing to a private corporation. It is safe to assume that the right to regulate such matters was never before attempted to be contracted away to a church or any other body of men, nor are we aware that the right to regulate man's duty to his Maker was ever included in a contract; and, finally, this charter provides that such laws and customs shall be founded in the revelations of the Lord. This, too, probably, is the first time that a Legislature expressly limited the rules and laws that a corporation might make by the revelations of the Lord and made a grant thereof to any person, natural or artificial.

In this charter the respondent insists the church gained a vested right upon its acceptance, and that Congress has no power to disapprove or to annul it.

37 We know of no precedent for holding that a corporation could obtain a vested right in a charter like this. Had the territorial Legislature the power to grant a vested right to such a charter? The case of Dartmouth College *vs.* Woodward (4 Wheaton, 518) has been regarded as settling the question that the charter of a private corporation constitutes a contract between a State and a corporation. By this contract the corporation, in consideration of presumed benefits to the public, obtains a vested right in the charter, unless the constitution or a general law of the State or the charter itself reserves the right to amend or repeal; but we find no case holding that a charter granted by the Legislature of a Territory gives such vested right.

Again, it will be found, we think, that the powers granted by a State in such charters were limited to some particular purpose; that they did not embrace powers which the Legislature possessed for the purpose of government, to be exercised by that body alone or conferred upon some municipal government for the same purpose. Such powers are never granted by the people to the Legislature to be bartered and sold. A government based upon the will of the people must ever keep such authority within reach of the people's will. Legislatures are but the agents of the people, with authority to make laws within constitutional limits, but without authority to give or to contract away powers to make laws to govern the people, so that private parties may gain vested rights in them. The

38 charter in question assumes to grant to the corporation power to make regulations and laws with respect to marriage, tithing, fellowship, etc. It confers in express terms upon the church power and authority to originate, make, and pass rules, regulations, ordinances, and to establish customs and "criterions" for the government, convenience, and control of the church (which means the whole Mormon population of the Territory), as well as the right to acquire by purchase or otherwise real and personal property and to sell or dispose of it at pleasure. Such are some of the powers conferred upon this church corporation by this remarkable act. To such a charter it is claimed the church has acquired a vested right. If this proposition is sound the corporate body known as the Church of Jesus Christ of Latter-Day Saints may endure under this charter

to distant ages, but we are of the opinion that a vested right could not be acquired in such a charter.

Further, Congress possesses the power to enact laws for the government of the Territories. It may make provision for territorial government and extend the authority of territorial Legislatures to all rightful subjects of legislation. Such territorial governments occupy towards Congress something of the same relation as municipalities, such as city governments, fill towards the State Legislatures. A State Legislature can repeal the charter of a municipal government and the ordinances passed under it; so Congress
39 can repeal the organic act of a Territory and all territorial enactments in pursuance of the organic act. Congress is the sovereign power to legislate for the Territories, and all charters from territorial Legislatures must be held to have been accepted with the knowledge that Congress possessed the authority to change or repeal the law creating them. In the case of National Bank *vs.* Yankton, 101 U. S., 129, the court said: "The Territories are but political subdivisions of the outlying dominion of the United States, * * * and Congress may legislate for them as a State does for its municipal organizations. * * * In the organic act of Dacotah there was not an express reservation of power in Congress to amend the acts of the territorial Legislature, nor was it necessary. Such a power is an incident of sovereignty and continues until granted away. Congress may not only abrogate laws of the territorial Legislature, but it may itself legislate directly for the local government. It may make a void act of the territorial Legislature valid and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial government. It may do for the Territories what the people, under the Constitution of the United States, may do for the States."

This we conceive to be the law upon the subject.

In the case under discussion the Territory was organized under the organic act approved September 9th, 1850. Among other provisions is the following: "That the legislative power of said
40 Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States and if disapproved shall be null and of no effect." The charter in question was a law passed by the Legislative Assembly, and the right to disapprove it was expressly reserved, and the church must be held to have accepted it with the knowledge of the reserved right of disapproval. That being so, the church will not be heard to say that it was accepted without conditions. In order to maintain that the charter when accepted became a contract binding on Congress it is necessary to assume that the acceptance was unconditional; otherwise it is simply an act of the Legislature giving to the corporation the use of the authority contained in it during the pleasure of Congress. The acceptance of the charter subject to disapproval could make the charter no more than a license to the cor-

poration to use the authority granted during the pleasure of Congress.

We are of the opinion, therefore, from a view of the whole subject, both from the nature of the powers granted by the charter itself and from the form of the grant and of the acceptance, that the acceptance did not give the corporation a vested right in it.

But assuming that the acceptance of the charter did not give a vested right in it the claim is made that the second section of an act of Congress approved July 1st, 1862, made the charter, as
41 thereby limited, a law of the United States and not subject thereafter to disapproval or repeal. The section is this:

SEC. 2. And be it further enacted, That the following ordinance of the provisional government of the State of Deseret, so called, namely, "An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints," passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January nineteen, in the year eighteen hundred and fifty-five, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution," and all other acts and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield, or countenance polygamy be, and the same hereby are, disapproved and annulled: Provided, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned nor with the right "to worship God according to the dictates of conscience," but only to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

42 In the enacting clause of this section the charter in question, termed "An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints," is repealed in express terms; but the proviso limits the effect of the entire act in three respects—1st, so that it shall not affect the right to property legally acquired under the charter; 2nd, so as not to interfere with the right to worship God according to the dictates of conscience; 3rd, so as to annul only all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances. The enacting clause was not limited by the proviso in the two respects first mentioned, because that clause simply repealed the charter without interfering with the rights of property which had been acquired under it, nor did it interfere with the right to worship God according to the dictates of conscience; and it is not clear that the third limitation mentioned left standing any portion of the charter, for it is expressly stated that the intention of the law was to annul all laws countenancing polygamy or spiritual marriage, though appearing in the

law disguised by the name of a solemnity, a sacrament, a ceremony, a consecration, or under any other contrivance; and under just such marks as these we think polygamy does appear in the char-
43 ter of the Church of Jesus Christ of Latter-Day Saints. With all such disguises and contrivances stripped from this charter little, comparatively speaking, is left of it.

But assuming that the expressed intent to annul all acts countenancing polygamy left other provisions in force, was the remainder of the charter made an act of Congress? Such an intention is not expressed. It must have been so made by implication. From the provisions of the act of 1862 it is clear that Congress did not regard the charter as a contract; otherwise it would not have changed its provisions. We may assume that Congress changed the charter, according to its conceptions of duty at the time, with the understanding that it might be changed further or altogether disapproved whenever, in the opinion of Congress, the good of society required such change or disapproval. We do not think that the act of Congress of 1862 affords the inference that so much of the charter as remained in force was, in effect, a law of the United States. This view seems to be in accordance with the opinion of the Supreme Court of the United States in the case of Miners' Bank *vs.* Iowa (12 Howard, 1). The territorial Legislature of Wisconsin chartered the Miners' Bank. Afterwards an act of Congress annulled the charter in certain particulars, but left other of its provisions in force. Thereafter the Territory was divided by act of Congress and the Territory of Iowa was erected over that part of the former Territory of Wisconsin in which the bank was situated. Later the territorial Legislature of Iowa repealed the charter and directed the settle-
44 ment of the affairs of the corporation by trustees under the supervision of the court. A *quo warranto* proceeding was instituted against the bank. In deciding the case on appeal the court used this language: "It has been argued in this case that as Congress in creating the territorial government of Wisconsin and Iowa reserved to themselves the power of disapproving and thereby annulling the acts of those governments, and had in the exercise of that power stricken out several of the provisions of the charter of the Bank of Dubuque, enacted by the Legislature of Wisconsin, assenting to the residue, that therefore the charter of this bank should be regarded as an act of Congress rather than of the territorial government. * * * Congress, in creating the territorial governments and in conferring upon them powers of general legislation, did not, from obvious principles of policy and necessity, ordain a suspension of all acts proceeding from these powers until expressly sanctioned by themselves, whilst, for considerations equally strong, they reserved the power of disapproving or annulling such acts of territorial legislation as might be deemed detrimental. * * * The charter of the Bank of Dubuque, enacted in all its details and powers ever possessed by it (and according to which it was in fact organized) by the Legislature of Wisconsin, must be looked upon as the creature of that Legislature." The sev-

45 enteenth section of the act of March 3rd, 1887, under which this bill is filed, is as follows:

SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law, and in such proceedings the court shall have power and it shall be its duty to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith and burial grounds and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act to the respective trustees mentioned in section twenty-six of this act, and for the purposes of this section said court shall have all the powers of a court in equity.

46 The power of Congress to dissolve the corporation styled the Church of Jesus Christ of Latter-Day Saints necessarily follows the right to annul its charter, which we have held could be done. This disposes of the question raised upon the first clause of the seventeenth section of the act. The last clause of that section should be considered in connection with sections thirteen and twenty-six of the same act. They are as follows:

SEC. 13. That it shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862,' entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States, and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Provided, That no building or the grounds appurtenant thereto which is held and occupied exclusively for purposes of the
47 worship of God or parsonage connected therewith or burial ground shall be forfeited.

SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nom-

ination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

The second clause of the seventeenth section quoted makes it the duty of the Attorney General of the United States to institute proceedings in this court to wind up the affairs of the corporation dissolved by the first clause of the same section, and gives the court power to make such decree as may be proper to transfer the title to real property held and used by the corporation for places of worship and parsonages connected therewith and burial grounds, as mentioned in the proviso to section thirteen and in section twenty-six of the same act.

For the purpose of such proceeding the court is given all the powers of a court of equity. The proviso of section thirteen exempts just such property as last described from forfeiture, with no limitation on value as in the act of 1862; and section twenty-six gives to all religious societies, sects, and congregations the
48 right to hold, through trustees nominated and appointed as therein provided, so much real property for the use of houses of worship, parsonages, and burial grounds as shall be necessary; nor is the value in this section limited.

By the first part of section thirteen it is made the duty of the Attorney General to institute proceedings to forfeit and escheat to the United States the property of the corporation obtained or held in violation of section three of the act of 1862 or of section 1890 of the Revised Statutes of the United States (which two sections are substantially the same). This property so forfeited and escheated to the United States and the proceeds thereof are to be applied to the use and benefit of the common schools in the Territory in which such property may be.

Section 3 of the act of 1862 is as follows:

SEC. 3. And be it further enacted, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars, and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheated to the United States: Provided, That existing vested rights in real estate shall not be impaired by the provisions of this section.

49 It will be seen that section thirteen of the act of March 3rd, 1887, authorizes the forfeiture only — the property obtained or held in violation of section three of the act which took effect July 1st, 1862—that is to say, property acquired after the act took effect and in violation of it; and we may here remark that the policy of limiting the amount of land which religious corporations may hold is not new, but it is a practice which has obtained for ages. It was announced in Magna Charta more than six hundred years ago and continued by many enactments of Parliament de-

signed to meet the evasions and contrivances of the church for escaping the laws.

It has been the settled policy in this country, as shown by the statutes of various States, and a quarter of a century ago Congress limited the amount of real estate that any church might hold in any of the Territories. It has been the settled design of such statute to confine church holdings to the amount that is necessary simply for church purposes, and the observance of such lands has been secured by forfeiture, which seems the most appropriate and effectual method.

We are unable to discover that any of the provisions of the act of Congress of March 3rd, 1887, relating to the corporation of the Church of Jesus Christ of Latter-Day Saints interferes with vested rights or is in conflict with any provision of the Constitution of the United States. This brings us to the question whether the allegations of the bill are sufficient to authorize the appointment
50 of a receiver. The following facts, with others, are alleged in the bill: That the Church of Jesus Christ of Latter-Day Saints was incorporated under the act of the territorial Legislature quoted, and did buy and hold large amounts of real estate and personal property of great value in the Territory of Utah after the 1st day of July, 1862. The precise amount, value, or description thereof the plaintiff was unable to state, but asked leave to prove, and on information and belief alleged the value of the real estate to be about two millions of dollars and the personal property to be about one million dollars; that the corporation of the Church of Jesus Christ of Latter-Day Saints and the successor of the John Taylor (whose name is to this plaintiff unknown), as trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, assistant trustees, the defendants, wrongfully and in violation of the laws of the United States, still claim to hold and do exercise the powers which were held and exercised by the said corporation of the Church of Jesus Christ of Latter-Day Saints, and are unlawfully possessing and using the real estate mentioned above, and are receiving and unlawfully applying to its and their own use the rents, issues, and profits thereof, and falsely and wrongfully claim the right to sell, use, and dispose of the same.

Tenth. That since the nineteenth day of February, 1887, there has been and is no person lawfully authorized to take charge
51 of, manage, preserve, or control the property, real and personal, which on or before the day and year last aforesaid was held, owned, possessed, and used by the corporation of the Church of Jesus Christ of Latter-Day Saints, and by reason thereof all the said property, as referred to in the third paragraph of this bill, is subject to irreparable and irremediable loss and destruction.

The reasons for the statement of facts in terms so general are sufficiently apparent.

When the corporation was dissolved its officers and agent no longer had any legal right to the possession of its property, to its

use, or to the rents and profits thereof. It further appears from the allegations of the bill that the respondents are receiving and applying to their own use the rents and profits of the property and claiming the right to sell, use, and dispose of it.

Assuming the facts to be as alleged in the bill, a portion of the property must be forfeited and must escheat to the United States, to be applied to the use and benefit of the common schools of the Territory of Utah.

"The modern English practice, allowing the appointment of a receiver before answer in cases of emergency, was adopted by the English court of chancery and has been generally followed in this country, and it may now be regarded as the uniform and well-established practice to entertain the application and to grant the relief before answer, where plaintiff can satisfy the court that he has an equitable claim to the property in controversy, and that a
52 receiver is necessary to preserve it from loss, or where a clear case is shown of fraud and imminent danger unless the relief is granted. High on Receivers, 2nd ed., par. 105.

"In all such cases a court of equity necessarily exercises a large discretion as to whether it will or will not take possession of the property by its receiver, and this discretion is governed by a consideration of all the circumstances of the case. It is, therefore, difficult to establish any fixed rule in such cases, although it may be said generally that if the case as presented upon the application for a receiver is clearly in favor of plaintiff, indicating that he will probably be entitled to a final recovery, the risk of injury to defendant is very small and the court does not hesitate to interfere. If there be more doubt as to plaintiff's right there is, of course, more difficulty in passing upon the application, the question being one of degree, as to which it is impossible to lay down any precise rule." (*Id.*, par. 19, also noted under this section.)

"Where, indeed, the property is as it were *in medio*, in the enjoyment of no one, the court can hardly do wrong in taking possession. It is the common interest of all parties that the court should prevent a scramble." (As to the general doctrine to the same effect is Kerr on Receivers, p. 1, 3, 4, and 5.)

We are of the opinion that the facts alleged in the bill are sufficient to authorize the appointment of a receiver according to the prayer.

53 A further question arises upon the stipulation of facts upon which the motion is submitted whether these facts are sufficient to authorize the appointment of a receiver.

Among the facts contained in the stipulation on which this motion is submitted are the following:

On the 28th day of February, 1887, John Taylor, who was then the trustee in trust for the Church of Jesus Christ of Latter-Day Saints, held in trust certain personal property, goods, and chattels of the aggregate value of $268,982.395, which, it is claimed by the defendants and denied by the plaintiff, had theretofore been contributed by the individual members of said church for the purpose of building temples and for other charitable and religious purposes.

On said last-named date the said John Taylor, as trustee in trust, executed an instrument in writing, a copy of which is hereto attached and made part hereof, marked "Exhibit A."

That, in pursuance of the provisions of the instrument aforesaid, certain property, of the value approximately as set out below, was delivered to the following-named ecclesiastical church corporations created and existing under the laws of the Territory of Utah:

To the Church Association of the Cache Stake of Zion	$45,036 09
To the Church Association of the Box Elder Stake of Zion	16,745 18
To the Church Association of Weber Stake of Zion	11,480 06
54 To the Church Association of the Morgan Stake of Zion	2,716 57
To the Church Association of Summit Stake of Zion	3,153 20
To the Church Association of Wasatch Stake of Zion	6,044 90
To the Church Association of Salt Lake Stake of Zion	32,702 70
To the Church Association of Tooele Stake of Zion	4,591 105
To the Church Association of Juab Stake of Zion	3,049 03
To the Church Association of Utah Stake of Zion	25,000
To the Church Association of San Pete Stake of Zion	6,992 13
To the Church Association of Sevier Stake of Zion	15,445 50
To the Church Association of Millard Stake of Zion	14,083 89
To the Church Association of Beaver Stake of Zion	6,980 36
To the Church Association of Panguitch Stake of Zion	8,137 50
To the Church Association of St. George Stake of Zion	28,638 41
55 To the Church Association of Kanab Stake of Zion	38,185 77
Total	$268,982 395

The members of the said stake corporation are members of the Church of Jesus Christ of Latter-Day Saints, and it is claimed by defendants and denied by plaintiffs that they were substantially the original donors of said property in their respective stakes.

The Church of Jesus Christ of Latter-Day Saints was a corporation for the purposes set out in the act incorporating said church at the time the act of Congress of 1887, hereinbefore set out, took effect, and has claimed to exist as a corporation ever since that time.

The tithing house and grounds, as hereinbefore set out, are not and have never been used as a place of worship, or parsonage connected therewith, or as burial ground, nor are they appurtenant to any thereof.

The portion of the third tract of land set out in the first part of this agreement as the guardo house and grounds and the historian's office and grounds, which is known as the historian's office and grounds, comprises a tract about eight by ten rods. The building thereon is a three-story adobe building, about 35 feet by 45 feet. The grounds of the guardo house and the grounds of the historian's

office are separated by a terrace, and, for part of the way, by an evergreen hedge.

The historian's office and tract has been used as the office
56 and residence of the historian of said church and as a depository for the records of said church and for library purposes, and has been so used since prior to 1861. For the purposes of this motion the probable value of the real estate herein described is estimated as follows:

1. The temple and tabernacle block, one hundred and fifty thousand dollars.

2. The tithing house and grounds, twenty-five thousand dollars.

3. The portion of tract three, known as the guardo house and grounds, fifty thousand dollars.

4. The portion of tract three known as the historian's office and grounds, ten thousand dollors.

From these facts it sufficiently appears that the defunct corporation has in its possession real property in value far exceeding fifty thousand dollars, the limit fixed by the act of Congress of 1862, and that a portion of it is not a building or the grounds appurtenant thereto held for the purpose of the worship of God or parsonages connected therewith or burial ground, and that the title to a large portion of the same property was acquired subsequently to the time the act of 1862 took effect.

In deciding this motion we are not called upon to finally determine the rights of the parties with respect to the property involved in this case. Such rights will be decided as they ultimately appear, and if the receiver appointed shall claim a right to the possession of any property as receiver to which third parties also claim
57 a right the issue will then be determined. We are of the opinion that the complainant's motion for the appointment of a receiver should be allowed. An order will be made to that effect in accordance with the prayer of the bill.

Boreman, justice, concurs.
Henderson, A. J., concurs.

[Endorsed:] U. S. *vs.* Church, etc. Filed Nov. 5th, 1887. E. T. Sprague, clerk.

58 *The Answer of the Corporation of the Church of Jesus Christ of Latter-Day Saints to Plaintiff's Complaint.*

In the Supreme Court of the Territory of Utah, of —— Term. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants. } No. —.

The Corporation of the Church of Jesus Christ of Latter-Day Saints, defendant in plaintiff's complaint, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the said bill of complaint of the United States of America, for its several separate answers thereunto or to so much or such parts thereof as said defendant is advised it is material or necessary to make answer unto, answering, says:

First. Said defendant avers that on the 4th day of February, A. D. 1851, the Assembly of the provisional government of the State of Deseret, which was afterwards organized as the Territory
59 of Utah, passed an ordinance incorporating and granting corporate powers, rights, and privileges to the Church of Jesus Christ of Latter-Day Saints; that afterwards, on the 8th day of February, A. D. 1851, the said ordinance was duly approved, a copy of which said ordinance is hereby made part hereof and attached hereto as Exhibit "A;" that afterwards, to wit, on October 4th, A. D, 1851, an act of the Legislative Assembly of the Territory of Utah was approved adopting, legalizing, and validating all ordinances of the Assembly of the provisional government of the State of Deseret, making the same and all of them laws of the Territory of Utah, a copy of which said act of the Legislative Assembly of the Territory of Utah is hereby made part hereof and attached hereto as Exhibit "B;" that afterwards, to wit, on January 19th, A. D. 1855, an act of the Legislative Assembly of the Territory of Utah was approved adopting, re-enacting, and making valid the said ordinance of the Assembly of the provisional government of the State of Deseret, hereinabove set forth, which said act was entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution;" that said ordinance and said acts of the Legislative Assembly of the Territory of Utah constituted and were and are a

contract by and between the territorial government of the Territory of Utah and the United States of America, on the one part,
60 and the persons accepting said corporate grant and becoming thereunder incorporators of the said defendant corporation, The Church of Jesus Christ of Latter-Day Saints, on the other part; that by said ordinance and acts of said territorial Legislature, hereinabove set forth, the said corporation, defendant herein, had and possessed the power to acquire and hold real and personal property, without limitation as to value and amount, for the purposes specified in its charter.

Second. Said corporation, defendant herein, further avers that in its corporate name it never acquired, owned, or held any real or personal property whatsoever, but that said defendant corporation, by virtue of and under the powers granted by said ordinance did acquire and hold certain real and personal property through and in the name of a trustee in trust for said defendant corporation; that afterwards, to wit, on July 1st, A. D. 1862, a certain act of the Congress of the United States of America was duly approved, by the third section of which it was enacted and provided that it should not thereafter be lawful for any corporation or association for religious or charitable purposes to acquire or hold any real estate in any Territory of the United States, during the existence of the territorial government, of greater value than fifty thousand dollars, especially providing that existing vested rights in real estate should not be impaired by the provisions of said act, a copy of which said act
61 of Congress is hereby made part hereof and attached hereto as Exhibit "C;" and defendant avers that it was at the time of its creation, ever since has been, and still is, a corporation or association for religious or charitable purposes; that afterwards, to wit, on March 3rd, A. D. 1887, a certain act of the Congress of the United States of America took effect, by which the General Government of the United States of America claims, attempts, and purports to have disapproved and annulled the said ordinance of the Assembly of the provisional government of the State of Deseret and the said acts of the Legislative Assembly of the Territory of Utah, hereinabove set forth and made a part hereof, and claims, attempts, and purports to have dissolved and disincorporated said defendant corporation; a copy of sections 13, 14, 17, and 26 of which said last-named act of Congress is hereby made part hereof and attached hereto as Exhibit "D;" and said defendant corporation here now avers that the said last-named acts of Congress hereinabove set forth and referred to, or so much of said acts as attempts or pretends to dissolve the said defendant corporation or to interfere with or limit its right to hold property, or which attempts to escheat the same or to wind up its affairs, were and are unconstitutional, invalid, and void; that said General Government of the United States of America has not now and never has had or possessed the power or right to repeal or annul the ordinance and acts creating said defendant corporation and
62 granting unto it in perpetuity certain rights, powers, and privileges nor any of them, the same being in the nature of contracts by and between the territorial government of the Terri-

tory of Utah and the United States, on the one part, and the incorporators of said defendant corporation, on the other part; that said defendant corporation, relying upon the said ordinance and acts of incorporation as contracts, in good faith acquired and obtained certain real and personal property, as lawfully and justly it might, and held the same by a trustee in trust, as in said ordinance and acts of incorporation lawfully provided.

Third. Said defendant corporation avers that at the time the said act of Congress last hereinabove set forth, to wit, March 3rd, A. D. 1887, went into force and took effect the said defendant corporation, by and through certain trustees, held and owned three certain pieces, tracts, or parcels of real estate and no more; which said three pieces, tracts, or parcels of real estate are described as follows, to wit:

All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods to the place of beginning, containing two and $\frac{157}{160}$ acres.

All of that part of lot six (6), in block seventy-five (75),
63 plat A, Salt Lake City survey, bounded and described as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods to the place of beginning.

And defendant further avers that it had acquired and owned and held two of said above-named tracts or parcels of real estate prior to the passage and approval of said act of Congress approved July 1, A. D. 1862, to wit, the two pieces of real estate described as follows, to wit: All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, commencing four rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods to the place of beginning, containing two and $\frac{157}{160}$ acres.

That the piece of real estate first above described, to wit, all of block eighty-seven (87), in plat A, Salt Lake City survey, was on the 19th day of February, 1887, and ever since the year 1850 has been and now is used and occupied exclusively for purposes of the worship of God.

Defendant further avers that the only piece, tract, or parcel of real estate that it owned and held by and through trustee at the
time the said act of Congress of March 3, A. D. 1887, took
64 effect, which had been acquired by said defendant corporation subsequent to the passage and approval of the said act of Congress of July 1, A. D. 1862, was and is the tract or parcel of real estate described as follows, to wit:

All of that part of lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, bounded and described as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods to the place of beginning; which said piece, tract, or parcel of real estate the said defendant acquired, held, and possessed more than five years, to wit, nine years, prior to the institution of this suit.

And defendant further avers that the last above-described tract of real estate was at the time said act of Congress of March 3, A. D. 1887, took effect, and always since it was acquired by said corporation has been and still is used and occupied only and solely as parsonage proporty, and that the same was and is necessary for the convenience and use of the congregation, church, or religious society using the same as its parsonage.

Said defendant corporation further avers that since the time of its creation as such corporation it has acquired, owned, and held divers and sundry other tracts and parcels of real estate, but that long prior to the taking effect of the said act of Congress of March 3, A. D. 1887, the said defendant corporation, as it lawfully might, had sold, conveyed, transferred, and disposed of all of its said tracts and parcels of real estate by it at any time held
65 and owned other than the three pieces, tracts, or parcels of real estate hereinabove described.

Fourth. Said defendant corporation further avers that after the passage and taking effect of the said act of Congress of March 3, A. D. 1887, under, in pursuance of, and in obedience to the requirements of the 26th section of said act, through the proper authorities of the Church of Jesus Christ of Latter-Day Saints, it did apply to the proper court exercising probate powers in the said Territory of Utah, to wit, the probate court in and for Salt Lake county, in said Territory, for the appointment of three trustees to take the title to and have and hold the said three tracts or parcels of real estate hereinabove described; that the said court did, pursuant to the said 26th section of said act of Congress of March 3, A. D. 1887, on the nineteenth day of May, 1887, appoint the following-named three trustees, to wit, William B. Preston, Robert T. Burton, and John R. Winder, to take title and to have and to hold the said three tracts or parcels of real estate hereinabove described, and that afterwards the said three tracts or parcels of real estate hereinabove described, with the exception of a part of lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, bounded and described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods to the place of beginning, were duly and legally deeded, conveyed, and transferred to said trustees so appointed as aforesaid, copies
66 of which said deeds of conveyance are hereby made part hereof and attached hereto as Exhibits "E," "F," and "G;" that the said tract last above described, being seven by ten rods, is now held by Theodore McKean in trust for said defendant corpora-

tion and should have been included in his conveyance to said trustees, Preston, Burton, and Winder, but through an oversight and mistake on the part of the draughtsman of said deed was until this date unknown to the parties thereto, erroneously omitted therefrom.

And said defendant corporation here now avers that since the conveyance of said real estate, as hereinabove set forth, to said trustees so appointed by the probate court as aforesaid it has not held or owned and does not hold or own any real estate whatsoever.

Said defendant corporation further avers that John Taylor, now deceased, was the late trustee in trust authorized and empowered by said defendant corporation, pursuant to the law of its incorporation, to acquire, own, or hold real estate or personal property in trust for said defendant corporation; that said John Taylor departed this life on the 25th day of July, A. D. 1887, and that since his death no successor as trustee in trust has ever been appointed, elected, or chosen by said defendant corporation as trustee in trust to acquire, own, or hold in trust for said defendant corporation any real or personal property.

Fifth. Said defendant corporation further avers that it is not true, as averred in the eighth paragraph of plaintiff's complaint,
67 that the charter and act of incorporation of defendant was disapproved, repealed, and annulled by the Congress of the United States on the 19th day of February, 1887, but, on the contrary, that even if the said act of Congress was and is valid and binding, nevertheless the same did not go into force and take effect until the third day of March, A. D. 1887.

And defendant further avers that prior to February 28, 1887, it had as such corporation, as it lawfully might by the powers granted to it by its acts of incorporation, acquired and held from time to time certain personal property, goods, and chattels, all of which it had acquired, held, and used solely and only for charitable and religious purposes; that on the 28th day of February, A. D. 1887, it still held and owned certain personal property, goods, and chattels donated to it by the members of said church and friends thereof solely and only for use and distribution for charitable and religious purposes; that defendant at all times, from the time of its creation as a corporation up to February 28, 1887, held whatever personal property belonged to it not in its corporate name, but in the name of a trustee in trust; that on February 28, 1887, John Taylor, who then held all the personal property, moneys, stocks, and bonds belonging to said defendant corporation as trustee in trust for said defendant, by and with the consent and approval of defendant, donated, transferred, and conveyed all of said personal property, moneys, stocks, and bonds held by him belonging to said defendant corporation, after setting apart and reserving certain
68 moneys and stocks then held by him, sufficient in amount and necessary for the payment of the then existing indebtedness of said defendant corporation to certain ecclesiastical corporations created and existing under and by virtue of the laws of the Territory of Utah, to be devoted by said ecclesiastical

corporations solely and only to charitable and religious uses and purposes; that said conveyance of said personal property was made by said Taylor by an instrument in writing, and that pursuant to said instrument in writing said Taylor, as trustee in trust for said defendant corporation, did deliver to the said various ecclesiastical corporations named in said instrument in writing the said personal property in said instrument mentioned and described, a copy of which said instrument selling, conveying, and transferring said personal property to said ecclesiastical corporations is hereby made part hereof and attached hereto as Exhibit " H."

Wherefore defendant avers that at the time said act of Congress of March 3, A. D. 1887, went into force and took effect this defendant corporation did not own, possess, or hold any personal property other than mere furniture, fixtures, and implements of and pertaining to its houses of worship and parsonage; and said defendant corporation here now expressly and specifically denies each and every averment and allegation of plaintiff's complaint not hereinabove admitted.

69 Wherefore and by reason of the facts herein set forth said defendant corporation prays the court that the prayer of plaintiff in its said complaint be denied, and that upon the final hearing of this cause decree may be rendered and entered by this court in favor of this defendant corporation, and that said defendant corporation may be dismissed hence with its proper costs and charges in this behalf laid out and expended.

And defendants will every pray.

JAMES O. BROADHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Solicitors for said Defendant Corporation.

70 EXHIBIT "A."

An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints.

SEC. 1. Be it ordained by the general assembly of the State of Deseret, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein, and which are known and distinguished as " The Church of Jesus Christ of Latter-Day Saints," are hereby incorporated, constituted, made, and declared a body corporate, with perpetual succession, under the original name and style of " The Church of Jesus Christ of Latter-Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State, to establish, order, and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

SEC. 2. And be it further ordained, That such body or church as a religious society may at a general or special conference elect one

"trustee in trust" and not to exceed twelve assistant trustees to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds, with approved security, in whatever sum the said conference may deem sufficient for the faithful performance of their several duties, which said bonds, when approved, shall be filed in the general church recorder's office at the seat of general church business, when said bonds are approved by said conference, and said trustees and assistant trustees shall continue in
71 office during the pleasure of said church; and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office at the seat of general church business; and when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

SEC. 3. And be it further ordained, That as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience;" to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ, for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that said church does and shall possess and enjoy continually the power and authority in and of itself to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, convenience, comfort, and control of said church and for the punishment or forgiveness of all offenses relative to fellowship according to church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally
72 be questioned: Provided, however, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality and are not inconsistent with or repugnant to the Constitution of the United States or of this State and are founded in the revelations of the Lord.

SEC. 4. And be it further ordained, That said church shall keep at every full organized branch or stake a registry of marriages, births, and deaths free for the inspection of all members and for their benefit.

SEC. 5. And be it further ordained, That the presidency of said

church shall fill all vacancies of the assistant trustees necessary to be filled until superseded by the conference of said church.

SEC. 6. Be it further ordained, That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property without the consent or approval of the trustee in trust of said church.

Approved February 8, 1851.

73 EXHIBIT "B."

Joint resolution legalizing the laws of the provisional government of the State of Deseret.

(1.) Resolved by the Legislatve Assembly of the Territory of Utah, That the laws heretofore passed by the provisional government of the State of Deseret, and which do not conflict with the "organic act" of said Territory, be, and the same are hereby, declared to be legal and in full force and virtue, and shall so remain until superseded by the action of the Legislative Assemby of the Territory of Utah.

Approved October 4, 1851.

74 EXHIBIT "C."

An act to punish and prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person having a husband or wife living who shall marry any other person, whether married or single, in a Territory of the United States or other place over which the United States has exclusive jurisdiction shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars and by imprisonment for a term not exceeding five years: Provided, nevertheless, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living, nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court, nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

SEC. 2. And be it further enacted, That the following ordi-
75 nance of the provisional government of the State of Deseret, so called, namely, "An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints," passed February eight, in the

year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January nineteen, in the year eighteen hundred and fifty-five, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution," and all other acts and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield, or countenance polygamy be, and the same are, disapproved and annulled: Provided, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned nor with the right "to worship God according to the dictates of conscience," but only to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

SEC. 3. And be it further enacted, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars, and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States:
76 Provided, That existing vested rights in real estate shall not be impaired by the provisions of this section.

Approved July 1, 1862.

77 EXHIBIT "D."

Sections 13, 14, 17, and 26 of "An act to emend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,'" approved March twenty-second, eighteen hundred and eighty-two.

SEC. 13. That it shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Provided, That no building or the grounds appurtenant thereto which is held and occupied exclusively for purposes of the worship of God or parsonage connected therewith or burial ground shall be forfeited.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess
78 of the amount limited by law the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power and it shall be its duty to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith and burial grounds and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act to the respective trustees mentioned in section twenty-six of this act, and for the purposes of this section said court shall have all the powers of a court of equity.

79 SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

80 EXHIBIT "E."

This indenture, made on this thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-seven, by and between John Taylor, trustee in trust of that certain body of religious worshippers called and known as the Church of Jesus Christ of Latter-Day Saints, party of the first part, and William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas, by an act of Congress entitled "An act to amend an act

entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it is, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah county, Utah Territory, the authorities of said church, by a unanimous vote, were then and there requested to nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding
81 bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property belonging to said church in said county, the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith, constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees, to hold the property as trustees that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; and

Whereas the said party of the first part has been for many years the trustee in trust of said body of religious worshippers, and
82 has been so designated and known, and as such has up to this time held certain property of said religious worshippers in trust for them, a part of which said property is hereinafter described, and that said body of religious worshippers are for the most part

inhabitants of Utah Territory, and that said property is hereby conveyed to said parties of the second part in trust for said beneficiaries, and on the trusts and limitations and with the reservations and powers hereinafter named:

Now, therefore, this indenture witnesseth: That the party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey, unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors, duly appointed, upon trust, and to their assigns forever, the property above referred to, and which is particularly described as follows, to wit: All of block eight-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, together with and including all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof:

To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivor or survivors of them and to their successors, duly appointed, and to their assigns forever, for the use, benefit, and behoof of that certain body of religious
83 worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of such trusteeship, either by reason of death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints if there be one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

84 In witness whereof the said parties have all hereunto set their hands and seals this 30th day of June, 1887.

JOHN TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—

SAMUEL BATEMAN. [SEAL.]
JAMES E. MALIN. [SEAL.]

UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Davis, }

On this thirtieth day of June, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, Joseph Barton, a notary public in and for said county, duly appointed, commissioned, and qualified, John Taylor, whose name is subscribed to the annexed instrument as first party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as the party of the first part, and duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Kaysville city, Davis county, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JOSEPH BARTON,
Notary Public.

85 EXHIBIT "F."

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Robert T. Burton and his wife, Maria S. Burton, the parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas by an act of Congress entitled "An act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it is, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in the Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen

hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah county, Utah Territory, the authorities of said church by unanimous vote were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

86 That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property belonging to said church in said county the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property as trustees that might be transferred to them pursuant to the law aforesaid, and the said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; and whereas the said Robert T. Burton, one of the parties of the first part, has been for many years a trustee, holding certain real property for said religious worshippers in trust for them, which said property is hereinafter described:

87 Now, therefore, this indenture witnesseth: That the parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors, duly appointed, upon trust, and to their assigns forever the property above referred to and which is particularly described as follows, to wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one half ($22\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, containing two and $\frac{157}{160}$ acres, together with and including all and singular the tenements, here-

ditaments, and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof; to have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them and to their successors, duly appointed, and to their assigns forever, for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall name, dictate, and appoint.

88 In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of said Church of Jesus Christ of Latter-Day Saints if there is one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this 2nd day of July, 1887.

ROBERT T. BURTON. [SEAL.]
MARIA S. BURTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN KIRKMAN.
WALTER MUSSER.

89 UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for

Salt Lake county, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Robert T. Burton and Maria S. Burton, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who each of them acknowledged to me that they each of them, respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Maria S. Burton, wife of the aforesaid Robert T. Burton, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly, and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband, for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

90 UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake county, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Robert T. Burton and Maria S. Burton, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who each of them acknowledged to me that they each of them, respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Maria S. Burton, wife of the aforesaid Robert T. Burton, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly, and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband, for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

91 EXHIBIT "G."

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Theodore McKean and his wife, Mary P. McKean, parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas by an act of Congress entitled "An act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it is, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church, duly assembled at Provo City, in Utah county, Utah Territory, the authorities of said church, by unanimous vote, were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

92 That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as trustees to hold the real property belonging to said church in said county the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q.

Cannon, and Joseph F. Smith constitute the first presidency of said church and are its acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property as trustees that might be transferred to them pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment:

Now, therefore, this indenture witnesseth:

That the party of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and — these presents do grant, bargain, sell, and convey, unto the said parties of the
93 second part, as joint tenants, and not as tenants in common, and to their successors duly appointed, upon trust, and to their assigns forever the property particularly described as follows, to wit: All of the east half of lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning.

Together with and including all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof:

To have and to hold the above granted and described premises and property unto the said party of the second part, as joint tenants as aforesaid, and to the survivor or survivors of them and to their successors duly appointed and to their assigns forever, for the use, benefit, and behoof of the president or leader of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, for a residence or parsonage and to and from such use as the president or leader of said church, by whatever name designated, shall name, dictate, and appoint.

In case it may or shall at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors
94 shall at any time be deceased or incompetent for any cause to act or discharge said trust the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there is one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of

new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title is vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly-appointed trustee or trustees, who shall hold the same on the trusts and confidence nereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this second day of July, 1887.

THEO. McKEAN. [SEAL.]
MARY P. McKEAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
FREDERICK KESLER.

UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

95 On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake county, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Theodore McKean and Mary P. McKean, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who each of them acknowledged to me that they, each of them, respectively executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Mary P. McKean, wife of the aforesaid Theodore McKean, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

96 EXHIBIT "H."

SALT LAKE CITY, *February 28th*, 1887.

Whereas, by and with the consent of my brethren of the first presidency and the twelve apostles of the Church of Jesus Christ of Latter-Day Saints, and with the approval, so far as I have been able to lay the matter before them, of the members of said church, and in consideration of the rights and powers in me vested, and of the reservations and the uses to which the property herein named is to be put, I, John Taylor, trustee in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints and president of said church, have, for the purpose of aiding the several stake organizations, concluded to convey to the respective corporations hereinafter named the personal property situated in the several counties of Utah, hereinafter designated as the certain stakes of Zion:

Now, therefore, in consideration of the premises, and of the promise and agreement that the said grantees will faithfully carry out the trust and confidence herein and hereby imposed, and for other good and valuable considerations, and for the sum of one dollar to me in hand paid by each of the corporations named hereinafter, the receipt whereof is hereby acknowledged, I, John Taylor, trustee in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints, have given, granted, and conveyed, and by these presents do give, grant, and convey, unto those several certain ecclesiastical corporations existing under the laws of Utah, the personal property existing in the several stakes of Zion in Utah Territory, which said corporations and stakes of Zion are designated and named as follows, to wit:

97 To the corporation called the Church Association of Cache Stake of Zion I hereby convey all the personal property located in Cache, Bear Lake, Bannock, and Oneida Stakes held by me as such trustee or owned by said church at this date, situated in Cache Co., Utah, and Bear Lake and Bingham and Oneida counties, Idaho Territory.

2nd. To the corporation called the Church Association of Box Elder Stake of Zion I hereby convey all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Box Elder county, Utah Territory, and Cassia county, Idaho Territory.

3rd. To the corporation called the Church Association of Weber Stake of Zion I hereby convey all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Weber county, Utah Territory.

4th. To the corporation called the Church Association of Morgan Stake of Zion I hereby convey all the personal property located in said stake, held by me as such trustee or owned by said church at

this date, which is within the territorial limits of Morgan county, Utah Territory.

5th. To the corporation called the Church Association of Davis Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Davis county, Utah Territory.

98 6th. To the corporation called the Church Association of Summit Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Summit county, Utah Territory.

7th. To the corporation called the Church Association of Wasatch Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Wasatch county Utah Territory, or that belonging to that stake of Zion.

8th. To the corporation called the Church Association of Salt Lake Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Salt Lake county, Utah Territory, provided this grant shall not be construed to pass the stocks in the several incorporated companies which I, as trustee in trust, now hold in said county.

9th. To the corporation called the Church Association of Tooele Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Tooele county, Utah Territory.

10th. To the corporation called the Church Association of Juab Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Juab county, Utah Territory.

99 11th. To the corporation called the Church Association of Utah Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Utah county, Utah Territory; but this shall not be construed to pass the stocks in the incorporated companies which I, as trustee, now hold in said county.

12th. To the corporation called the Church Association of San Pete Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of San Pete county, Utah Territory.

13th. To the corporation called the Church Association of Uintah Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Uintah county, Utah Territory.

14th. To the corporation called the Church Association of Emery Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Emery county, Utah Territory.

15th. To the corporation called the Church Association of Sevier Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Sevier and Piute counties in Utah Territory.

16th. To the corporation called the Church Association of Millard Stake of Zion I hereby give all the personal property,
100 held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Millard county, Utah Territory.

17th. To the corporation called the Church Association of Beaver Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Beaver county, Utah Territory.

18th. To the corporation called the Church Association of Panguitch Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Piute and Garfield counties, Utah Territory.

19th. To the corporation called the Church Association of San Juan Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of San Juan county, Utah Territory.

20th. To the corporation called the Church Association of Parowan Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the limits of Iron county, Utah Territory.

21st. To the corporation called the Church Association of St. George Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date and located in said stake, which is within the limits of Washington county, Utah Territory, and Lincoln county, State of Nevada.

101 22nd. To the corporation called the Church Association of Kanab Stake of Zion I hereby give all the personal property held by me as such trustee or owned by said church at this date and located in said stake, including the horses and cattle on the Pipe Spring ranch.

The grant and transfer of property hereby made shall not be construed to cover any property hereafter to be acquired by me, as such trustee, or to be hereafter acquired by the said church in the several stakes aforesaid:

To have and to hold unto the said several stakes of Zion the personal property above referred to and consisting of horses, cattle, sheep, swine, grain, hay, straw, flour, poultry, and other personalty

of every nature and kind, save and except the cash or stocks aforesaid, for the use and benefit of the members of the Church of Jesus Christ of Latter-Day Saints residing in the said several stakes and for the building of houses of worship and for such use as the said corporation shall from time to time devote said means to or the income thereof, with full power in said corporation to use any of said property so conveyed to them hereby for the building of houses of worship or temples and the like that may be outside of the territorial limits of the stakes thus contributing, so that such houses and temples to which assistance may be given are erected for the worship of God, in harmony with the established views and religious tenets of the Church of Jesus Christ of Latter-Day Saints.

I hereby appoint James Jack as my attorney and agent to fully carry out this conveyance and to deliver the property aforesaid to the said corporations or to their duly appointed agent or agents.

102 In witness whereof I have hereunto set my hand and seal this day and year first above written.

JOHN TAYLOR, [SEAL.]
Trustee in Trust.

Attest:
THOMAS F. ROUECHE.
JOSEPH BARTON.

103 EXHIBIT —.

An act confirming and legalizing an "ordinance incorporating the Perpetual Emigrating Fund Company."

SEC. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah, That the "ordinance incorporating the Perpetual Emigrating Fund Company," passed by the provisional government of the State of Deseret, approved September 14, 1850, is hereby amended, confirmed, and legalized as follows:

Be it ordained by the General Assembly of the State of Deseret, That a general conference of the Church of Jesus Christ of Latter-Day Saints or a special conference of said church, to be called at such time and place as the first presidency of said church shall appoint, is hereby authorized to elect by a majority a company of not less than thirteen men, one of whom shall be designated as their president and the other as assistants.

SEC. 2. This company is hereby made and constituted a body corporate under the name and style of "The Perpetual Emigrating Fund Company," and shall have perpetual succession and may have and use a common seal, which they may alter at pleasure.

SEC. 3. Said company, under the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, and hold, either by donation or deposit or otherwise, money and every kind of property, real and personal; to emit bills of credit and exchange; to sell, lease, convey, or dispose of property, real or personal, and, finally, to do and perform any and

all such acts as shall be necessary and proper for the interest,
104 protection, convenience, or benefit of said company.

SEC. 4. A majority of such members of said company as may at any time be in the immediate neighborhood of their president shall form a quorum to do business and shall elect a secretary and treasurer and shall have power to select and appoint all other officers and agents necessary to transact the business of said company.

SEC. 5. The president and assistants shall individually give bonds and security in a sum not less than ten thousand dollars, to be approved by the first president of said church and filed in the general church recorder's office.

SEC. 6. The secretary and treasurer and all other officers or agents appointed by the company shall give bonds and security, to be approved by the president of the company and filed in the company secretary's office.

SEC. 7. There shall be a general settlement of all business transactions of the company, so far as returns received from abroad will permit, as often as once in each year, and it shall be the duty of all the officers and agents to make out correct returns of all their transactions and deliver or transmit them to the secretary of said company on or before the first day of December in each year, and as soon as practicable thereafter it shall be the duty of the president of the company to produce or exhibit a manifest thereof and file it in the secretary's office and file a copy of said manifest in the general church recorder's office.

SEC. 8. It shall be the duty of the treasurer to keep an accurate account of all money or property received and disbursed by him, and make returns, as hereinbefore directed.

105 SEC. 9. The company shall have the power of appointing and removing their officers and agents at pleasure; and it shall be the duty of said persons when removed to pay and pass into the hands of their respective successors or of the company all moneys, property, books, papers, and accounts of every name and nature belonging or in any way pertaining to the business of said company.

SEC. 10. The entire proceeds of the business of this company shall inure to the perpetual emigrating fund for the poor, whether arising from donations, insurance, deposits, exchange, increased value of property, or in any other way or manner whatsoever; and the general business of the company shall be devoted, under the direction and supervision of the first presidency of said church, to promote, facilitate, and accomplish the emigration of the poor.

SEC. 11. The members of this company shall hold their offices at the pleasure of the conferences hereinbefore mentioned, but the first presidency of said church shall have power to fill all vacancies that may occur by death, removal, or otherwise; and all persons so appointed shall qualify and serve as hereinbefore directed, and hold their office until superseded by an election.

SEC. 12. No officer, agent, or member of the company shall be permitted to retain in his hands any portion of the funds of the company as compensation, but may receive such remuneration as

shall be awarded upon settlement with the board of president and assistants.

SEC. 13. All persons receiving assistance from the Perpetual Emigrating Fund Company shall be held responsible therefor until paid.

Approved January 12, 1856.

105½ [Endorsed:] U. S. *vs.* Church, &c. Answer. Filed 9th Nov., 1887. E. T. Sprague, clerk. I hereby acknowledge service of a copy of the within pleadings. Geo. S. Peters, U. S. att'y.

106 In the Supreme Court of the Territory of Utah, of —— Term.

In Equity.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants. } No. —.

The joint and several answer of Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor to plaintiff's complaint.

Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, made defendants in said plaintiff's complaint, now and at all times hereafter saving and reserving unto themselves jointly and unto each of them severally all benefit and advantage of exception which can or may be had or taken to the many errors,

107 uncertainties, and other imperfections of the plaintiff's bill of complaint, jointly and severally, for answer thereunto or to so much or to such parts thereof as these defendants and each of them severally are advised it is material or necessary to answer unto, answering, say:

First. Said defendants and each of them, except Moses Thatcher, severally deny that they ever were, and each and all of them severally deny that they now are, assistant trustees of the said corporation of the Church of Jesus Christ of Latter-Day Saints, as set forth and averred in plaintiff's complaint. Said defendants and each of them severally aver that they never did, nor did any or either of them ever, qualify or give bonds as assistant trustees for said defendant corporation, as provided and required by the ordinance and

acts of incorporation to qualify them to act as assistant trustees of said corporation. Said defendants and each of them admit that they and each of them did act as counsellors and advisers of the late trustee in trust of said defendant corporation, John Taylor, deceased, not as assistant trustees duly qualified in accordance with the acts of incorporation incorporating said defendant corporation, but simply and solely as members of said church and counsellors and advisers of said trustee in trust when by him asked for counsel and advice regarding the religious and charitable works and affairs of said church.

And the said Moses Thatcher avers that on the 8th day of
108 April, A. D. 1873, he was duly elected an assistant trustee for said corporation by said Church of Jesus Christ of Latter-Day Saints at its general conference; that his term of office as such assistant trustee expired on the ninth day of October, A. D. 1875, and that he has never since been nor acted as nor performed any of the duties of an assistant trustee of said corporation.

Second. Said defendants and each of them jointly and severally aver that they never have and do not now own, hold in trust or otherwise, or possess any real or personal property of and belonging to said defendant corporation; and said defendants and each of them jointly and severally specifically deny each and every of the averments and allegations of the plaintiff's complaint, and they and each and every of them jointly and specifically disclaim and deny any ownership or possession, as trustees or otherwise, of any property, real and personal, of and belonging to the said defendant corporation.

Third. Said defendants and each of them jointly and severally aver that they have carefully read and thoroughly understand the answer of the defendant corporation to which this answer of these defendants is attached; and said defendants and each of them jointly and severally here now adopt said answer of said defendant corporation and incorporate the same into this their answer as part thereof with the same force and effect as if the same were here at large set forth; and said defendants and each of them severally aver that to the best of their knowledge, information, and belief, and to
109 the best of the knowledge, information, and belief of each and every of them severally, each and all of the averments and allegations of said answer of said defendant corporation are true in substance and in matter of fact, as they verily believe.

Wherefore and by reason of the facts herein set forth said defendants pray the court that they may be dismissed hence with their proper costs and charges in this behalf laid out and expended.

JAMES O. BROADHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Solicitors for said Defendants.

[Endorsed:] Supreme court. The United States *vs.* The Late Corporation of the Church, &c., *et al.* Answer of Woodruff, Snow, and

others. Filed Nov. 9th, 1887. E. T. Sprague, clerk. I hereby acknowledge service of a copy of the within pleading. Geo. S. Peters, U. S. att'y.

110 *The Joint and Several Answer of William B. Preston, Robert T. Burton, and John R. Winder.*

In the Supreme Court of the Territory of Utah, of —— Term. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, and John R. Winder, Defendants. } No. —.

William B. Preston, Robert T. Burton, and John R. Winder, made defendants in the above-entitled cause, now and at all times hereafter saving and reserving unto themselves jointly and unto each of them severally all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the plaintiff's bill of complaint, jointly and severally, for answer thereto, or to so much or to such parts thereof as these defendants and each of them severally are advised is material or necessary to make answer unto, answering, say—

First. That on the 9th day of May, A. D. 1887, the said defendants, Wm. B. Preston, Robert T. Burton, and John R. Winder, were duly appointed by the probate court of Salt Lake county, Utah Territory, trustees to take the title to and have and hold the real estate belonging to the Church of Jesus Christ of Latter-Day Saints; that said appointment was made by said probate court on the nomination of the duly constituted authorities of said Church of Jesus Christ of Latter-Day Saints, in due form of law, under and in pursuance of an act of Congress entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,'" approved March 22, 1882.

Second. That after the appointment of said defendants as such trustees as aforesaid, to wit, on the 30th day of June, A. D. 1887, the following-described land and premises were duly and legally deeded, conveyed, and transferred to said defendants as such trustees, to wit: All of block eighty-seven (87), plat A, Salt Lake City survey, in Salt Lake county, Utah Territory.

That on the 2d day of July, 1887, the following-described tracts

of land and premises were duly and legally deeded, conveyed, and transferred to said defendants as such trustees so appointed as aforesaid, to wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half ($22\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, containing $2\frac{1}{1}\frac{5}{6}\frac{7}{0}$ acres; also all of the east half of lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods; thence east ten (10) rods to the place of beginning; all of which will more fully appear from the records of the recorder's office of Salt Lake county, Utah Territory, where said deeds of transfer are duly recorded, as provided by law.

Third. That upon the execution and delivery of the deeds of conveyance of said land and premises to the said defendants, Wm. B. Preston, Robert T. Burton, and John R. Winder, as trustees as aforesaid, they entered upon and took possession of each and every of the parcels and tracts of land aforesaid, and have ever since held and now hold the legal title and possession thereof in trust for the said Church of Jesus Christ of Latter-Day Saints.

Fourth. The said defendants and each of them jointly and severally aver that they do not hold in trust or otherwise or possess any other real or personal property of or belonging to said Church of Jesus Christ of Latter-Day Saints, save and except that which is hereinbefore described and a piece of the aforesaid lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east
111 seven (7) rods; which said piece of land was intended to be conveyed to these defendants as trustees as aforesaid at the same time and by the same deed as that which conveyed the east half of said lot to them, but the same was, by mistake of the draftsman of said deed, erroneously omitted therefrom.

Fifth. The said defendants and each of them jointly and severally aver that they have carefully read and thoroughly understand the answer of the defendant corporation on file herein; and said defendants and each of them jointly and severally here now adopt said answer of said defendant corporation and hereby incorporate the same into this their answer as part thereof with the same force and effect as if the same were here at large set forth; and said defendants and each of them severally aver that to the best of their knowledge, information, and belief, and to the best of the knowledge, information, and belief of each and every of them, each and all the allegations and averments of said answer of said defendant corporation are true in substance and in matter of fact, as they verily believe.

Wherefore and by reason of the facts herein set forth said de-

fendants pray the court that they may be dismissed hence with their proper costs and charges in this behalf laid out and expended.

JAMES O. BROADHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRANDE YOUNG,
Solicitors for said Defendants.

(Endorsed:) Supreme court. The United States *vs.* Late Corporation of Church of J. C. of L. D. Saints *et al.* Answer of Preston, Burton, & Winder. Filed Nov. 9th, 1887. E. T. Sprague, clerk. I hereby acknowledge service of a copy of the within pleading. Geo. S. Peters, U. S. att'y.

112 In the Supreme Court of the Territory of Utah. In Equity.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

Replication of the United States of America to the answer of the Late Corporation of the Church of Jesus Christ of Latter-Day Saints.

The plaintiff, The United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who files this replication by direction of Augustus H. Garland, Attorney
113 General of the United States, says: The said plaintiff, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, The Late Corporation of the Church of Jesus Christ of Latter-Day Saints, for replication thereunto, says that it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, untrue, and insufficient in the law to be replied unto by the said plaintiff, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which mat-
114 ters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill of complaint it has already prayed.

GEO. S. PETERS,
U. S. Att'y for Utah Territory.

[Endorsed:] United States *vs.* The Late Corporation of the C. of J. C. of L. D. S. *et al.* Service of copy made on us Nov. 26, 1887. Le Grand Young, of counsel for def'ts. General replication to answer of Late Corporation of, &c. Filed Nov. 26, 1887. E. T. Sprague, clerk.

115 In the Supreme Court of the Territory of Utah. In Equity.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richardson, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

Replication of The United States of America, plaintiff, to the joint and several answer of Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor.

The plaintiff, The United States of America, by George S.
116 Peters, United States attorney in and for the Territory aforesaid, who files this replication herein by direction of Augustus H. Garland, Attorney General of the United States, says:

The United States of America, plaintiff, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, says—

That it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the said answer of the said defendants is very uncertain, evasive, untrue, and insufficient in the law to be replied unto by the said plaintiff, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is
117 true; all which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill of complaint it has already prayed.

GEORGE S. PETERS,
U. S. Att'y for Utah Territory.

[Endorsed:] United States *vs.* The Late Corporation of C. of J. C. of L. D. S. *et al.* Service of copy made on us Nov. 26, 1887. Le

Grand Young, of counsel for defendant-. General replication to the answer of Wilford Woodruff *et al.* Filed 26th Nov., 1887. E. T. Sprague, clerk.

118 In the Supreme Court of the Territory of Utah. In Equity.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Taesdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, and William B. Preston, Robert T. Burton, and John R. Winder, Defendants.

Replication of the United States of America to the joint and several answer of William B. Preston, Robert T. Burton, and John R. Winder.

The plaintiff, The United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who
119 files this replication by direction of Augustus H. Garland, Attorney General of the United States, says:

The plaintiff, The United States of America, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, says that it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, untrue, and insufficient in the law to be replied unto by the said plaintiff, without that, that any other matter or things in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court
120 shall direct, and humbly prays as in and by its said bill it has already prayed.

GEO. S. PETERS,
U. S. Att'y for Utah Territory.

[Endorsed:] United States *vs.* The Late Corporation of the C. of J. C. of L. D. S. *et al.* Service of copy made on us November 26, 1887. Le Grand Young, of counsel for defendants. General replication to the answer of Wm. B. Preston *et al.* Filed Nov. 26th, 1887. E. T. Sprague, clerk.

121 In Supreme Court.

WEDNESDAY, *November* 30, *A. D.* 1887.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

It appearing by answer filed in this cause that the legal title to a part of the real property involved herein is in one Theodore McKean, on motion of Geo. S. Peters, Esq., for plaintiff, it is ordered that said McKean be, and he hereby is, made party defendant herein, and the usual subpœna is ordered to be issued and served on him.

122 In Supreme Court.

MONDAY, *July* 9, *A. D.* 1888.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

* * * * * * *

On motion of Mr. Geo. S. Peters, for plaintiff, it is ordered that Angus M. Cannon be, and he is hereby, made a party defendant to this cause, and his answer to the complaints therein is now here filed.

123 TERRITORY OF UTAH, *County of Salt Lake:*

In the Supreme Court of Utah Territory. In Equity.

UNITED STATES OF AMERICA

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, and Angus M. Cannon, Defendants.

Angus M. Cannon, having been made by motion of said plaintiff a defendant in said entitled action, now and at all times hereafter saving and reserving unto himself all benefits and advantages of any exception which can or may be had to the many errors, uncer-

tainties, and other imperfections of the plaintiff's bill of complaint, for answer thereto, or so much or such parts thereof as this defendant is advised is material or necessary to make answer unto, answering—says,

124 That the said defendant, Angus M. Cannon, on the 18th day of September, 1874, became interested in the following-described land, which said defendant alleges, on his information and belief, to be coal lands, namely, the north half, ½, of the southeast quarter, ¼, the southeast quarter (¼) of the southwest quarter (¼), and lot four (4), section eighteen (18), and the north half (½) of the northeast quarter (¼), in section nineteen (19), in township three (3) north of range six (6) east of lands subject to sale at Salt Lake City, Utah Territory. Said defendant, Angus M. Cannon, further shows that he, with other claimants of said land, among whom was one Daniel H. Wells, filed upon said land pursuant to that certain act of Congress of the United States approved March 3d, 1873, entitled "An act to provide for the sale of lands of the United States containing coal."

That said claimants' right to obtaining title to said land was contested, but the claim of said defendant, Angus M. Cannon, and the said Daniel H. Wells and others, as aforesaid, was sustained

125 by the Land Department of the United States of America, but that by some error or mistake or otherwise a patent to said lands before the final adjudication of the right of said Angus M. Cannon, Daniel H. Wells, and others to the same had been executed and delivered to some other party or claimant thereto. Said defendant, Angus M. Cannon, further states that on his information and belief that he and his coclaimants are entitled to have and will yet obtain a title in fee to said premises; that said defendant, Angus M. Cannon, further alleges that on or about the year of 1879, the said Daniel H. Wells, being the owner of an undivided half of said land, then and there, for a valuable consideration, deeded and conveyed the same to the said defendant; that the consideration for said undivided one-half of said land was paid by the trustee in trust of the Church of Jesus Christ of Latter-Day Saints, and that said defendant at all times since said date of said deed has held and now holds the undivided one-half interest of said mine for the use and benefit of said church.

126 Defendant further alleges that he holds or has no other real or personal property of or belonging to said church in his name or otherwise.

ANGUS M. CANNON.

LE GRAND YOUNG,
F. S. RICHARDS, AND
SHEEKS & RAWLINS,
Attorneys for Defendant, Angus M. Cannon.

[Endorsed:] In supreme court. The United States *vs.* The State Corporation, &c. Answer of Angus M. Cannon. Filed July 9, 1888. E. T. Sprague, clerk.

127 In Supreme Court.

SATURDAY, *October 6th, A. D.* 1888.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

In this cause F. S. Richards, for defendants, asks leave to file three several petitions asking that certain real estate therein described be set apart for the use of the defendant church. Ordered thereon that such leave be, and is hereby, granted. Said petitions were thereupon filed, and thereafter answers thereto on the part of plaintiff were also filed.

In this cause also, it appearing that Francis Armstrong and Jesse W. Fox, Jr., have or claim an interest in certain of the real estate of which the title is herein involved, it is, on motion of Mr. Peters, for the plaintiff, ordered that said Armstrong and Fox be, and they hereby are, made parties defendant to this action. Answer on their behalf to the bill of complaints was thereupon filed.

128 In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

Now come the defendants, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, and allege—

That said Francis Armstrong is and since long prior to the 3d day of March, 1887, has been seized in fee, but in trust, nevertheless, to and for the use and benefit of the Church of Jesus Christ of Latter-Day Saints, of the following-described property, to wit: All that portion of lots 10, 11, 12, 13, and 14, block 38, big field ten-acre plot territorial survey, containing 16.72 acres, which is
129 included within the limits of the N. E. $\frac{1}{4}$ of section 24; also the E. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$; also parts of lots 1 and 5, commencing at a point south 14 rods from the N. E. corner of lot 1, section 23, thence west 48.4 rods; thence south 96 rods; thence S. 19° E. 11.2 rods to the west bank of water ditch; thence along the west

bank of said water ditch south 25° west 44 rods, more or less, to the south line of the N. E. ¼ of section 32; thence east 47 rods, more or less, to the S. E. corner of lot 5; thence N. 146 rods to the place of beginning, containing 73.35 acres, more or less.

Also ½ of the street on the N. side of all the above-described land, containing 1.62½ acres, more or less; also part of the S. W. ¼ of section 24, commencing at a point 28 rods west from the S. E. corner of said ¼ section, thence running north 30° E. 56 rods to the east line of said ¼ section; thence N. 111½ rods to the centre of said section; thence west 160 rods; thence south one hundred and sixty rods; thence east 132 rods to the place of beginning, containing 156.38 acres, more or less; also lots 6 and 9, in section 23, and lots 1 and 4, in section 26, containing 127 acres, more or less;
130 also part of the N. W. ¼ of section 24, commencing 14 rods S. from the N. E. corner of said ¼ section, thence running west 160 rods; thence south 146 rods; thence east 160 rods; thence N. 146 rods to the place of beginning, containing 146 acres, more or less; also ½ of the street on the N. side of said ¼ section, containing two acres; also part of the N. W. ¼ of section 25, commencing at the S. W. corner of said quarter section, thence running N. 160 rods; thence east 132 rods; thence south 30° west 92 rods; thence south 69.6 rods; thence west 50 rods; thence south 12.3 rods; thence west 36 rods to the place of beginning, containing 93.38 acres, more or less; also the N. E. ¼ of section 26, containing 160 acres; all of the above-described lands are situate in township one (1) south of range one (1) west, United States survey of Utah, excepting, however, therefrom the following-described tract of land conveyed to the Denver and Rio Grande and Western Railway Company by deed dated February 7th, 1882, beginning in the centre of the D. and R. G. — W. R. R. track 12 rods south and 30 rods east from N. W. corner of N. W. ¼ of section 24, township
131 one (1) south of range one (1) west of Salt Lake meridian; thence east 50 feet; thence south, parallel with and 50 feet distant from the center of said R. R. track, 4,381.6 feet to a 2-degree curve; thence southerly, on the east side along 2-degree curve and fifty feet from center of said R. R. track, 731 feet; thence S. 14¾ degrees E. 2,535½ feet; thence west 100 feet; thence north 14¾ degrees W. 2,535½ feet; thence northerly, along said 2° curve, on west side thereof and 50 feet distant from the center of said R. R. track, 731 feet; thence north 4,381.6 feet; thence east 50 feet to place of beginning, containing 17.56 acres of land, lying within the limits of the W. ½ of section 24 and W. ½ of N. W. ¼ of section 25, township and range aforesaid, said deed being recorded February 7th, 1882, in Book "S" of Deeds and Transfers, pages 451 and 452, records of Salt Lake county, U. T.; and also excepting that portion of the same bounded and described as follows, to wit: Part of section (26) twenty-six, in township one (1) south of range one (1) west, Salt Lake meridian, begining at the intersection of the west side of a four-rod street, running north and south, and the center of
132 Mill creek fifteen and five-tenths (15.5) rods west and eighty-one and five-tenths (81.5) rods north from the southeast

corner of the northeast quarter (¼) of said section twenty-six (26); thence north 84° 30′ west along the center of said creek one hundred and seventy-six (176) rods, more or less, to the east bank of the River Jordan; thence southerly along the east bank of the said river eighty-six (86) rods to the northeast corner of Benjamin Harmon's land; thence south 2° 15′ east along the east line of said Harmon's land one hundred and thirty-one and six-tenths (131.6) rods to the north side of a county road; thence north 88° 15′ east along the north side of said county road one hundred and fifty-four and eight-tenths (154.8) rods; thence north eighty-one degrees east thirty-six two-tenths (36.2) rods to a point due south from the place of beginning; thence north one hundred and seventy-nine (179) rods to the place of beginning, containing two hundred and twenty-three and seventy one-hundredths (223.70) acres, be the same more or less.

133 That the said Jesse W. Fox, Jr., is and since the twenty-third day of October, 1887, has been seized in fee of the real estate last above described, but in trust, nevertheless, to and for the use and benefit of the Church of Jusus Christ of Latter-Day Saints.

That the said Theodore McKean is, and since long prior to the 3d day of March, 1887, has been, seized in fee, but in trust, nevertheless, to and for the use and benefit of the president of the Church of Jesus Christ of Latter-Day Saints of the following-described real estate, to wit: Commencing at a point ten (10) rods west of the northeast corner of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning.

That neither of said defendants own, hold, or possess any other property, real or personal, in trust for said church.

J. O. BROADHEAD,
F. S. RICHARDS,
Solicitors for said Defendants.

[Endorsed:] Answer of Armstrong, Fox, and McKean. Filed Oct. 6, 1888. E. T. Sprague, clerk.

134 *Replication.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Defendants.

The replication of the United States of America to the joint answer of Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean.

The plaintiff, The United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who files

this replicafion by direction of Augustus H. Garland, Attorney General of the United States, says: The plaintiff, The United States of America, saving and reserving to itself all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, for replication thereunto, says that it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of said defendants is very uncertain, evasive, untrue,
135 and insufficient in the law to be replied unto by the said plaintiff, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All of which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

By GEO. S. PETERS,
U. S. Att'y.

[Endorsed:] Supreme court of Utah Territory. United States *vs.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.* Replication. Filed Oct. 8, 1888. E. T. Sprague, clerk.

136 In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court that on the nineteeth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake county, Utah Territory, trustees, to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as such trustees they
137 now hold the legal title to the following-described land and premises situated in the city and county of Salt Lake, Territory of Utah, to wit: The east half ($\frac{1}{2}$) of lot six (6), in block seventy-

five (75), plat "A," Salt Lake City survey, described as follows: Commencing at the northeast corner of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, and running thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods; thence east ten (10) rods to the place of beginning, known as the "Gardo house" and lot; that the said premises are held in trust by said trustees for the use and benefit of the president of that body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints as a parsonage, and the president of said church has made his home and residence thereon ever since the year 1878.

That the following-described premises, lying immediately west of and adjoining the premises above described, viz., a part of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten
138 (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods, to the place of beginning, known as the "Historian's office" and grounds, are and have been ever since the year 1878 a part of said parsonage, and the building situated thereon contains the church library and records; that the legal title to the last above-described premises is vested in one Theodore McKean, who holds it on the same trusts and for the same purposes as those hereinbefore set out, to wit, as a part of the parsonage or residence of the president of said Church of Jesus Christ of Latter-Day Saints.

Wherefore your petitioners pray that all the premises above described, with the buildings thereon and the appurtenances thereto, by proper order and decree, be set apart to said church as a parsonage, and the title thereto confirmed in the respective trustees who now hold the legal title to the same, and for such other and further relief as may seem to the court meet and proper.

JAS. O. BRODHEAD,
F. S. RICHARDS,
SHEEKS & RAWLINS,
Solicitors for said Petitioners.

[Endorsed:] The United States *vs.* The Late Corporation of the Church of J. C. of L. D. Saints *et al.* Petition of Preston, Burton, and Winder. Copy served this 6th of October, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 6th, 1888. E. T. Sprague, clerk.

139 *Answer.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants.

Now comes the said United States of America, by George S. Peters, its attorney in and for said Territory of Utah, and, for answer to the petition this day filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says—

That it is not true that said William B. Preston, Robert T. Burton, and John R. Winder, as trustees or otherwise, hold the legal title to the real estate in said petition first described and designated therein as the Gardo house and land or any part thereof; that it is not true that they hold the same or any part thereof in trust for the use and benefit of the president of that body of religious
140 worshipers known — and called the Church of Jesus Christ of Latter-Day Saints as a parsonage or otherwise.

The plaintiff, further answering said petition, says that the pretended conveyance under which the said William B. Preston, Robert T. Burton, and John R. Winder claim to hold the legal title to said property was and is wholly void and of no effect for want of power in the persons named therein as grantors to make the same.

The plaintiff further avers that said property known as the Gardo house and lot is not now and never has been a parsonage.

The plaintiff denies that the real estate in said petition secondly described, and designated therein as the historian's office and grounds, *are* and ever since the year 1878 *have* been a part of any parsonage or of the property in said petition first described.

The plaintiff also denies that the said Theodore McKean holds the legal title of said property as a part of the parsonage or residence of the president of the Church of Jesus Christ of Latter-Day Saints; but, on the contrary, the plaintiff avers that the said
141 Theodore McKean holds the legal title to said property in trust for the late corporation of the Church of Jesus Christ of Latter-Day Saints as a part of its general property and not otherwise; that said historian's office and grounds are entirely separate and apart from said Gardo house and lot and are in no manner connected therewith, nor are they used in connection with the same.

Plaintiff therefore asks that said petition be denied.

GEO. S. PETERS,
U. S. Att'y.

[Endorsed:] Answer to petition. Filed Oct. 6th, 1888. E. T. Sprague, clerk.

142 *Replication.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-Day Saints and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

In the Matter of the Petition of WILLIAM B. PRESTON, ROBERT T. BURTON, and JOHN R. WINDER to have the "Gardo house" and lot and "Historian'- office" and grounds set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and, for replication to the answer of the United States of America to the matters and things set forth in their said petition to have the "Gardo house" and lot and the "Historian's office" and grounds set apart to them as trustees for the Church of Jesus Christ of Latter-Day Saints, say that they will aver and prove the said petition to be true, and that the answer of
143 the United States of America is untrue, uncertain, and insufficient; all of which matters and things these repliants are ready to aver and prove as the court shall direct, and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Solicitors for the Petitioners.

[Endorsed:] Replication. Copy served October 8th, 1888. Geo. S. Peters, U. S. att'y. Filed October 8th, 1888. E. T. Sprague, clerk.

144 In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court and allege—

That on the nineteenth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake county, Utah Territory,

trustees to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as such trus-
145 tees they now hold the legal title to the following-described land and premises, situated in the city and county of Salt Lake, Territory of Utah, to wit: A portion of block eighty-eight (88), plat "A," Salt Lake City survey, bounded and described as follows, to wit: Commencing at a point four (4) rods north of the southwest corner of lot four (4), in block eighty-eight (88), plat "A," Salt Lake City survey, and running thence north twenty-six (26) rods, thence east twenty (20) rods, thence south twenty-two and one-half ($22\frac{1}{2}$) rods, thence west fourteen (14) rods, thence south three and one-half ($3\frac{1}{2}$) rods, thence west six (6) rods to the place of beginning, known as the "tithing-office" property; that said premises are held in trust by said trustees for the use and benefit of the Church of Jesus Christ of Latter-Day Saints; that they were taken possession of by the agents of said Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time have been and now are used and occupied by
146 said church; that prior to July 1st, 1862, buildings and other improvements of the value of several thousand dollars had been built thereon by said church, and that it had acquired a vested right to and interest in said property before July 1st, 1862, and was and is entitled to own and possess the same.

Wherefore your petitioners pray that the premises above described, with the buildings thereon and the appurtenances thereto, by proper order and decree, be set apart to said church and the title thereto and possession thereof confirmed in your petitioners as trustees as aforesaid, and for such other and further relief as may seem to the court meet and proper.

JAMES O. BRODHEAD,
F. S. RICHARDS,
SHEEKS & RAWLINS,
Solicitors for said Petitioners.

[Endorsed:] The United States *vs.* The Late Corporation of the Church of J. C. of L. D. Saints *et al.* Petition of Preston, Burton, & Winder. Received copy this 6th day of October, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 6, 1888. E. T. Sprague, clerk.

147 *Answer.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

Now comes the said United States of America, by George S.

Peters, its attorney for said Territory of Utah, and for answer to the petition this day filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says that it is not true that the said William B. Preston, Robert T. Burton, and John R. Winder, as trustees or otherwise, held the legal title to the real estate described in said petition and designated therein as the tithing-office property or any part thereof; that it is not true that they held the same for the use and benefit of the Church of Jesus Christ of Latter-Day Saints or otherwise; that it is not true
148 that prior to July 1st, 1862, the said church had a vested right to or interest in said property or any part thereof, and the said church is not now entitled to own or possess the same or any part thereof.

The plaintiff, further answering said petition, says that the so-called conveyance under which the said William B. Preston, Robert T. Burton, and John R. Winder claim to hold the legal title to the said property was and is wholly void and of no effect for want of power in the persons named therein as grantors to make the same. Wherefore the plaintiff asks that said petition be denied.

GEO. S. PETERS,
U. S. Att'y.

[Endorsed:] Answer to petition. Filed Oct. 6, 1888. E. T. Sprague, clerk.

149 *Replication.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

In the Matter of the Petition of WILLIAM B. PRESTON, ROBERT T. BURTON, and JOHN R. WINDER to have the "tithing-office" property set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and, for replication to the answer of the United States of America to the matters and things set forth in their said petition to have the "tithing-office" property set apart to them as trustees for the Church of Jesus Christ of Latter-Day

Saints, say that they will aver and prove the said petition to
150 be true, and the answer of the United States of America is untrue, uncertain, and insufficient; all of which matters and things these repliants are ready to aver and prove as the court shall direct, and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Solicitors for said Petitioners.

[Endorsed:] Replication. Copy served October 8th, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 8th, 1888. E. T. Sprague, clerk.

151 In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court and allege—

That on the nineteenth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake county, Territory of Utah, trustees to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as such trustees they now hold the legal title to block eighty-seven (87),
152 plat "A," Salt Lake City survey, situated in the city and county of Salt Lake and Territory of Utah, known as the "Temple block;" that there are on said block three large buildings, two completed and the third in course of construction, but nearing completion; that said buildings have been and are being constructed by said Church of Jesus Christ of Latter-Day Saints exclusively for religious purposes, and that the same have been and are used exclusively for the worship of God; that the whole of said block is ground appurtenant to said buildings, and that the same has been in the possession of said church and used by it ever since the year 1848 exclusively for religious purposes and for the worship of God.

Wherefore your petitioners pray that the premises above described, with the buildings thereon and the appurtenances thereto, be by proper order and decree set apart to said church and the title thereto and possession thereof confirmed in your petitioners as trustees

aforesaid, and for such other and further relief as may seem to the court meet and proper.

JAS. O. BRODHEAD,
F. S. RICHARDS,
SHEEKS & RAWLINS,
Solicitors for said Petitioners.

[Endorsed:] The United States *vs.* The Late Corporation of the Church of J. C. of L. D. Saints *et al.* Petition of Preston, Burton, & Winder. Copy received this 6th day of October, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 6th, 1888. E. T. Sprague, clerk.

153 *Answer.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

Now comes the said United States of America, by George S. Peters, its attorney for said Territory of Utah, and for answer to the petition this day filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says that it is not true that the said William B. Preston, Robert T. Burton, and John R. Winder, as trustees or otherwise, hold the legal title to the real estate de-
154 scribed in said petition and designated therein as the "Temple block" or any part thereof.

The plaintiff, further answering said petition, says that the pretended conveyance under which the said William B. Preston, Robert T. Burton, and John R. Winder claim to hold the legal title to said property was and is wholly void and of no effect for want of power in the persons named therein as grantors to make the same.

GEO. S. PETERS,
U. S. Att'y.

[Endorsed:] Answer to petition. Filed Oct. 6, 1888. E. T. Sprague, clerk.

155 *Replication.*

In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustee- in Trust of said Corporation, Defendants.

In the Matter of the Petition of WILLIAM B. PRESTON, ROBERT T. BURTON, and JOHN R. WINDER to have the "Temple block" set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and, for replication to the answer of the United States of America to the matters and things set forth in their said petition to have the "Temple block" set apart to them as trustees for the Church of Jesus Christ of Latter-Day Saints,
156 say that they will aver and prove the said petition to be true, and that the answer of the United States of America is untrue, uncertain, and insufficient; all of which matters and things these repliants are ready to aver and prove as the court shall direct, and they pray as in their petition they have already prayed.

JAS. O. BROADHEAD,
Solicitor for said Petitioners.

[Endorsed:] Replication. Copy served Oct. 8th, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 8, 1888. E. T. Sprague, clrek.

157 In Supreme Court.

MONDAY, *October 8th, A. D.* 1888.

* * * * * * *

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others, Defendants.

In this cause, on leave of court in that behalf first asked and granted, a petition in intervention of George Romney, Henry Dinwoody, James Watson, and John Clark, in behalf of themselves and all other members of the Church of Jesus Christ of Latter-Day Saints, asking that certain real property therein described be decreed to belong to the individual members of said church and possession

thereof given to trustees to hold for such members, was filed. Answer to such petition and replication to said answer were, on like leave granted, also filed.

158 *Petition.*

In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

Now come George Romney, Henry Dinwoodey, James Watson, and John Clark and, by leave of court first had and obtained, file this petition in intervention in the above-entitled cause on behalf of themselves and all others who are members of the church hereinafter mentioned, and for their grounds of intervention allege—

That the said members are more than one hundred thousand in number and so numerous that they cannot, without manifest inconvenience and oppressive delays in the said suit, be brought before the court; that all said members have an interest in
159 common with said petitioners in the subject of this petition and the questions involved in this suit; wherefore said petitioners file this petition for the benefit of all said members.

That heretofore, on the 7th day of November, 1887, this court made an order in the above-entitled action appointing Frank H. Dyer receiver of the Church of Jesus Christ of Latter-Day Saints, who thereupon duly qualified and ever since has been and still is acting as such receiver.

That since his said appointment said receiver has seized, taken possession of, and now holds, subject to the order of this court, the following-described real and personal property, to wit:

1. All of block eighty-seven (87), plat "A," Salt Lake City survey, situated in the city and county of Salt Lake and Territory of Utah, known as the "Temple block."

2. The east half ($\frac{1}{2}$) of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, described as follows: Commencing at the northeast corner of said lot and running thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning, known as the "Guardo house" and lot.

3. A part of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, described as follows: Commencing at a point ten

(10) rods west of the northeast corner of said lot and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the "Historian office" and grounds.

160 4. A portion of block eighty-eight (88), plat "A," Salt Lake City survey, bounded and described as follows, to wit: A. Commencing at a point four (4) rods north of the southwest corner of said lot four (4), running thence north sixteen (16) rods; thence east twenty (20) rods; thence south twelve and one-half (12½) rods; thence west 14 rods; thence south three and one-half (3½) rods; thence west six (6) rods to the place of beginning, known as part of the "tithing-office" property.

5. The south half of lots six (6) and seven (7), in block eighty-eight (88), plat "A," Salt Lake City survey, also known as a part of the "tithing-office" property.

6. All that portion of lots 10, 11, 12, 13, and 14, in block 38, big field ten-acre plot territorial survey, containing 16.72 acres, which is included within the limits of the N. E ¼ of section 24; also the east ½ of the N. E. ¼; also parts of lots 1 and 5, commencing at a point south 14 rods from the N. E. corner of lot 1, section 23, thence west 48.4 rods; thence south 96 rods; thence S. 19 degrees E. 11.2 rods to the west bank of water ditch; thence along the west bank of said water ditch south 25 degrees west, 44 rods more or less, to the south line of the N. E. ¼ of section 23; thence east 47 rods, more or less, to the southeast corner of lot 5; thence N. 146 rods to the place of beginning, containing 73.35 acres, more or less; also ½ of the street on the N. side of all the above-described land, containing one and sixty-two and one-half one-hundredths acres, more or less; also part of the S. W. ¼ of section 24, commencing at a point 28 rods west from the S. E. corner of said ¼ section, thence running north 30 degrees E. 56 rods to the east line of said

161 ¼ section; thence N. 111½ rods to the center of said section; thence W. 160 rods; thence S. 160 rods; thence east 132 rods to the place of beginning, containing 156.38 acres, more or less; also lots 6 and 9, in section 23, and lots 1 and 4, in section 26, containing 127 acres, more or less; also part of the S. E. ¼ of section 23, commencing at the N. E. corner of said quarter section, thence running south 160 rods; thence west 160 rods; thence N. 104 rods, more or less, to the river Jordan; thence down said river 9 rods, more or less; thence east two rods; thence along the east bank of water ditch north 25 degrees east 56.2 rods; thence east 127 rods to the place of beginning, containing 154.22 acres, more or less; also part of the S. E. ¼ of section 26, containing 127 acres, more or less; also part of the N. W. ¼ of section 24, commencing 14 rods south from the N. E. corner of said ¼ section, thence running west 160 rods; thence south 146 rods; thence east 160 rods; thence N. 146 rods to the place of beginning, containing 146 acres, more or less; also ½ of the street on the N. side of said quarter section, containing two acres; also part of the N. W. ¼ of section 25, commencing at the S. W. corner of said quarter section, thence running north 160 rods; thence east 132 rods; thence S. 30 de-

grees west 92 rods; thence S. 69.6 rods; thence west 50 rods; thence south 12.3 rods; thence west 36 rods to the place of beginning, containing 93.38 acres, more or less; also the N. E. ¼ of section 26, containing 160 acres. All of the above-described lands are situated in township one (1) south, of range one (1) west, United States survey of Utah, and are known as the church farm.

162 Excepting, however, therefrom the following-described tract of land conveyed to the Denver and Rio Grande Western Railway Company by deed dated February 7th, 1882: Beginning in the center of the D. & R. G. W. R. R. track 12 rods south and 30 rods east from the N. W. corner of N. W. ¼ of section 24, township one (1) south, of range one (1) west, Salt Lake meridian, thence east 50 feet; thence south parallel with and 50 feet distant from the center of said R. R. track 4,381.6 feet to a two-degree curve; thence southerly on the east side along 2-degree curve and fifty feet from center of said R. R. track 731 feet; thence S. 14¾ degrees E. 2,535½ feet; thence west 100 feet; thence N. 14¾ degrees west 2,535½ feet; thence northerly along said two-degree curve on west side thereof and fifty feet distant from the center of said R. R. track 731 feet; thence north 4,381.6 feet; thence east 50 feet to the place of beginning, containing 75.56 acres of land, lying within the limits of the W. ½ of section 24 and west ½ of N. W. ¼ of section 25, township and range aforesaid, said deed being recorded February 7th, 1882, in Book S of Deeds and Transfers, pages 451 and 452, records of Salt Lake county, U. T.

7. An undivided one-half of the south half of the southeast quarter, the southeast quarter of the southwest quarter, and lot 4, section 18, and the north half of the northeast quarter of section 19, township 3 north, range six east, in Summit county, Utah Territory, known as coal lands.

Personal Property.

One large safe.
One medium sized iron safe.
25 arm chairs.
163 11 rotary chairs.
10 upholstered chairs.
Two desks.
One letter-press.

800 shares of $100 each of the capital stock of the Salt Lake Gas Company.

4,732 shares of $100 each of the capital stock of the Deseret Telegraph Company.

One promissory note, dated March 2nd, 1877, due and payable to John Taylor, trustee in trust, or order, two years after date, calling for the sum of $13,333.32, bearing six per cent. interest from date, signed by Sharp and Little.

One promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, and calling for $1,666.66, with six per cent. interest from date, signed Le Grand Young.

One promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, in two years from date, calling for $4,833.33, with six per cent. interest from date, signed by James Jack.

One promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust, or order, in two years from date, calling for $5,000, with six per cent. interest from date, and signed by H. B. Clawson.

Thirty thousand one hundred and fifty-eight (30,158) sheep.

$237,666.15, money.

164 That since said personal property came into the possession of the receiver heretofore appointed in this cause he has collected as rent from the said real estate $2,850; as dividends on said gas stock, $4,900; as interest on said money, $2,233.60, said property being of the aggregate value of about seven hundred and fifty thousand dollars, exclusive of the Temple block.

That all the described property is and at the time it was so taken by said receiver was and long prior thereto had been the property of the Church of Jesus Christ of Latter-Day Saints, and the possession thereof by said receiver is wrongful and without authority or right.

That the said Church of Jesus Christ of Latter-Day Saints is and for many years last past has been a voluntary religious society or association, organized and existing in the Territory of Utah, for religious and charitable purposes.

That said petitioners and others, for whose benefit they file this petition, are members of said church, residing in said Territory; that said church became possessed of all the above-described property, in accordance with its established rules and customs, by the voluntary contributions, donations, and dedications of its said members, to be held, managed, and applied to the use and benefit of said church and for the maintenance of its religion and charities by trustees appointed by said members semi-annually at the general conference or meeting of said members.

That John Taylor, the late trustee so appointed, died on the 25th day of July, 1887, and since his said death no trustee has been appointed.

165 That said property in the hands of said receiver is claimed adversely to said church, said petitioners, and the members thereof, but wholly without right by said plaintiff, and is being wrongfully withheld and diverted by said receiver from the purposes to which it was donated, dedicated, and granted; that said petitioners and the said members on whose behalf this petition is filed are equitably the owners of said property and beneficially interested therein, and to prevent the diversion of the same from said religious and charitable purposes of said church to which they donated and granted said property *wherefore* your petitioners pray that in case said corporation of the Church of Jesus Christ of Latter-Day Saints should, upon the final hearing of this cause, be held and decreed to be dissolved, an order and decree of this court be made and entered adjudging and decreeing:

1. That the said property belongs to the individual members of said church, and that they are authorized to appoint a trustee or trustees to hold, manage, and apply such property and money — the purposes for which it was originally given.

3. That the said receiver deliver the possession of said property, together with its proceeds and income in his hands, to such trustee or trustees as may be named and appointed at a general conference of the members of said church in accordance with its rules and customs.

166 3. For such other and further relief as may be equitable and just.

JAS. BRODHEAD,
F. S. RICHARDS,
LE GRAND YOUNG,
SHEEKS & RAWLINS,
Solicitors for Interveners.

[Endorsed:] Supreme court of Utah Territory. United States of America, plaintiff, *vs.* The Late Corporation Church of Jesus Christ, etc., defendants. Petition in intervention. Received a copy of the within Oct. 8th, 1888. George S. Peters, U. S. att'y. Filed Oct. 8th, 1888. E. T. Sprague, clerk.

167 In the Supreme Court of the Territory of Utah.

UNITED STATES OF AMERICA
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and Others.

And now comes the United States, by A. H. Garland, its Attorney General, and George S. Peters, its attorney for the Territory of Utah, and files this its answer to the petition in intervention filed in the above-entitled cause by George Romney, Henry Dinwoodey, James Weston, and John Clark on behalf of themselves and all others who claim to have been members of the Church of Jesus Christ of Latter-Day Saints.

1. That as to whether the members of said late corporation are more than one hundred thousand in number and so numerous that they cannot, without manifest inconvenience, be brought before this court this plaintiff has not and cannot obtain sufficient information on which to base a belief, and therefore it neither admits nor denies the same; but it does deny that the petitioners or any other alleged members of the said Church of Jesus Christ of Latter-Day Saints, whether the same claim to have been members of the late corporation or of the voluntary religious sect now existing, have any interest, separately or in common, with regard to the matter set out in said petition or with regard to the property concerning which said petition is filed.

2. It is true, as set out in said petition, that Frank H. Dyer was

appointed receiver by this court in the above-entitled cause of action. It is also true that, under the order of this court, the said receiver has taken possession of and now holds, subject to
168 the orders of this court, the property, real and personal, set out in this petition. It is denied, however, that at the time the property aforesaid was taken possession of by the receiver that the same was the property of the Church of Jesus Christ of Latter-Day Saints, whether the allegations of said petition in that behalf are intended to apply to the late corporation or to the voluntary religious sect which has existed under the name of the Church of Jesus Christ of Latter-Day Saints since the dissolution of said corporation, as hereinafter set out. It is admitted, however, that prior to the dissolution of said corporation, as shall be hereinafter set out, said property belonged to the corporation of the Church of Jesus Christ of Latter-Day Saints, but since said dissolution there has been no legal owner thereof or successor in trust to said corporation, except the United States of America, as is hereinafter set out.

It denies that the Church of Jesus Christ of Latter-Day Saints has been for many years last past a voluntary religious society or association, but it is alleged, on the contrary, that up to the 19th day of February, 1887, said Church of Jesus Christ of Latter-Day Saints existed as a corporation for religious purposes, organized and existing, as is hereinafter set out, and that since said 19th day of February, 1867, at which date said corporation became dissolved, as is hereinafter set out, there has existed a voluntary and unincorporated religious society or sect known by the name of the Church of of Jesus Christ of Latter-Day Saints.

169 It is denied that the corporation of the Church of Jesus Christ of Latter-Day Saints, to which all of said property belonged, acquired the same by voluntary contributions, donations, and dedications of the members of said corporation, and, on the contrary, it is alleged that all of said realty was acquired by purchase, either from the United States Government or otherwise, and that said personalty was acquired by said church largely by purchase and other means, as is hereinafter set out.

It is denied that the receiver in this cause is wrongfully withholding and diverting the property aforesaid from the purposes to which it was donated, dedicated, and granted, and it is denied that the petitioners or any other persons are equitably or otherwise the owners of said property or any portion thereof or beneficially interested therein.

And, further answering said petition, as a special answer thereto the United States of America alleges as follows, to wit:

That on the 19th day of January, 1855, by an act of the territorial Assembly of the Territory of Utah, the Church of Jesus Christ of Latter-Day Saints became an incorporated body and association for religious and charitable purposes, and from said date continued to be an incorporation up to the 19th day of February, 1887.

That on the first day of July, 1862, the Congress of the United States passed an act entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and

other places, and disapproving and annulling certain acts of the Legislative Assembly for the Territory of Utah," which said act, among other things, provided in substance and effect that it should not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Ter-
170 ritory of the United States during the existence of the territorial government of a greater value than $50,000, and that all real estate acquired or held by such corporation or association contrary to the provisions of said act should be forfeited and escheated to the United States.

That on the 3rd day of March, 1887, the Congress of the United States passed an act entitled "An act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22nd, 1882, and in and by which said act it was provided, amongst other things, that it should be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of all corporations obtained or held in violation of the act of July 1st, 1862, above set out; and it was, moreover, provided by said act of Congress of February 19th, 1887, that the act of the Legislative Assembly of the Territory of Utah, hereinbefore referred to, incorporating the Church of Jesus Christ of Latter-Day Saints was disapproved and annulled, and that said corporation should be dissolved, and that it should be the duty of the Attorney General of the United States to institute proceedings in the supreme court of the Territory of Utah for the purpose of executing the provisions of said act, and to wind up the affairs of said corporation, and for other purposes set out in said act.

Wherefore the said corporation of the Church of Jesus Christ of Latter-Day Saints became and was a defunct and dissolved corporation.

171 That in pursuance of the act last aforesaid the Attorney General of the United States did, on the 30th day of July, 1887, commence a suit in the name of the United States in the supreme court of said Territory for the purpose of having the dissolution of said corporation judicially ascertained and declared; for the winding up of its affairs and the distribution of its estate according to law; for the appointment of a receiver pending the final determination of said suit for the purpose of collecting, managing, and preserving all of the property of said dissolved corporation.

That on the 7th day of November, 1887, the supreme court of the Territory of Utah, in the suit above named, appointed Frank H. Dyer receiver for the purposes aforesaid, and in accordance with the order of said court the said receiver has heretofore taken possession of and now holds the real and personal property set out in the petition of intervention aforesaid.

And it is further alleged that the said United States of America has heretofore filed in the district court for the third district of the Territory of Utah a proceeding in the nature of an information against all of the real property set out in said petition of interven-

tion for the purpose of having the same declared forfeited and escheated to the United States of America by reason and on account of the acquisition of the same by the said corporation of the Church of Jesus Christ of Latter-Day Saints in violation of and contrary to the provisions of the said act of July 1st, 1862, and said proceedings, by way of information, are now pending and undetermined in said court, and the said United States of America here shows to this honorable court that said real property is and has all be-
172 come forfeited to said United States, as is shown in said information.

And it is further shown and alleged to this honorable court that the said corporation of the Church of Jesus Christ of Latter-Day Saints was, in its nature and by its statute of incorporation, a religious corporation for the purpose of promulgating, spreading, and upholding the principles and practices, teachings, and tenets of said church, and that from the time of the organization of said corporation up to February 19th, 1887, when said corporation become dissolved, it never had any other corporate objects, purposes, or authority; never had any capital stock whatsoever or stockholders, nor were there ever any persons who were pecuniarily or financially interested in the property of said corporation, nor have there ever been any natural persons who were authorized under its act and charter of incorporation or otherwise to take or hold any personal property or estate for said corporation except such trustees as were provided for by its statute or incorporation, and the power of appointing such trustees wholly ceased and became extinct at the date of the dissolution of said corporation; that at the date of the dissolution of said corporation and prior thereto the said personal property had been used for and devoted exclusively to the promulgation, spread, and maintenance of the principles, practices, teachings, and tenets of the said Church of Jesus Christ of Latter-Day Saints, amongst which the doctrine and practice of polygamy or plurality of wives was a fundamental and essential doctrine, tenet, and practice of said church, and the same was opposed and contrary to good morals, public policy, and the laws of the United States, and
173 that the use made of said personal property was largely for the purpose of upholding and maintaining said doctrine and practice of polygamy, and for the purpose of violating the laws of the United States.

And it is further alleged that since the dissolution of said corporation there has existed a voluntary and unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints, which has comprised the great body of individuals named in said intervention, including the interveners whose names are set out, who formerly composed the membership of said corporation, and the organization and general government of said voluntary religious sect and the principles, doctrines, teachings, and tenets of the same included the doctrine and practice of polygamy and have been substantially the same as those of the said corporation, and said voluntary religious sect has upheld and maintained as strongly and as persistently the unlawful and immoral practice and doctrine of polyg-

amy as the said corporation upheld and maintained the same, and any uses, purposes, or trusts to which said personal property could be devoted in accordance with the original purposes and trusts to which it was dedicated would be opposed to good morals, public policy, and contrary to the laws of the United States.

And it is further alleged in answer to said petition in intervention that the nature of the said corporation of the Church of Jesus Christ of Latter-Day Saints was such that there were no stockholders who were in anywise pecuniarily or financially interested in the personal property held by said corporation, and that said corporation having become dissolved there are no natural persons or corporations who are in anywise legally entitled to any portion
174 of said personalty as successors in interest to said corporation of the Church of Jesus Christ of Latter-Day Saints; and it is further alleged that all definite, ascertained, and legal trusts to which said personalty was dedicated and for which it was originally acquired have totally failed and become extinct, and that the only trusts or purposes to which this court could in anywise devote such personalty are illegal and immoral, as hereinbefore set out, and it is therefore alleged that the said personalty is now in the hands of the receiver of this court as aforesaid, without any legal successors in interest or without any legal claimant except the United States, and without any trusts being in existence to which this court could apply the same; that by operation of law the said personalty and all thereof has become escheated to the United States of America.

And, for a further special answer to said petition in intervention and in answer to that portion thereof which alleges that said personalty was acquired by voluntary contributions, donations, and dedications of the members of the corporation of the Church of Jesus Christ of Latter-Day Saints, it is alleged that such is not true, and it is shown to this court that the late corporation, by virtue of its corporate existence and power, carried on business to a very wide extent and in many different fields, and whilst it is true that a large amount of personalty in the shape of tithings were paid to said church each year by the members thereof and in accordance with its rules and regulations, yet the personality now in the hands of said receiver is in no part made up or consisting of voluntary contributions or tithings paid in as aforesaid, but is all of it property which was
175 acquired by said Church of Jesus Christ of Latter-Day Saints in the course of trade by purchase and for a valuable consideration, and it held the same in its corporate capacity absolutely and entirely independent of any individual members of said corporation, and upon the trust and for the uses and purposes hereinbefore set out, and which said uses and purposes were, as has been alleged, in whole or in part immoral and illegal.

And now, having answered fully the petition of the intervention herein, it is prayed of this honorable court that said petition of intervention be denied, and that an order and decree be entered retaining the real estate set out in said petition in the hands of the receiver of this court pending the determination of the information for the forfeiture of the same, hereinbefore set out, and that a decree

be entered by this court declaring the personalty set out in said petition to have become the property of the United States of America by escheat and operation of law.

By GEORGE S. PETERS,
U. S. Attorney.

[Endorsed:] In supreme court Utah Territory. United States *vs.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.* Answer of pl'ff to petition of Romney and others. Filed Oct. 8th, 1888. E. T. Sprague, clerk.

176 *Intervening Petition of George Romney and Others.*

In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Defendants.

In the Matter of the Intervening Petition of GEORGE ROMNEY, HENRY DINWOODY, JAMES WATSON, and JOHN CLARK.

Replication of said interveners.

Now come the said interveners and, for replication to the answer of the United States of America to the matter- and things set forth in the said intervening petition, say that they will aver and prove the said petition to be true, and that the answer of said United States of America is untrue, uncertain, and insufficient; all of which matters and things *this* replicant, *is* to aver and prove as the court shall direct, and they pray as in their said petition they have already prayed.

JAS. O. BRODHEAD,
Sol. for Interveners.

[Endorsed:] The United States *vs.* The Late Corporation of The Church of J. C. of L. D. Saints *et al.* General replication to plaintiff's answer to interveners' petition. Copy received this 8th day of October, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 8, 1888. E. T. Sprague, clerk.

177 *Findings of Fact by the Court.*

In the Supreme Court of the Territory of Utah, of ——. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Defendants. } No. —.

Upon the pleadings and evidence and final decree.

This cause coming on this day for final hearing and determination by the court, upon the bill of complaint herein, the answers of

the several defendants and the replications thereto, the petition of William B. Preston, Robert T. Burton, and John R. Winder, trustees for the unincorporated sect of the Church of Jesus Christ of Latter-Day Saints, the petition of intervention by George Romney, Henry Dinwoodey, James Watson, and John Clark on behalf of themselves and others, and upon the answers to said petitions, and upon the evidence on file in this cause, including the agreed statement of facts entered into and accepted as evidence by the consent of all parties to this cause, and each and all of the parties to this cause being represented by counsel, and the court having duly considered the same and being fully advised in the premises, it doth find and declare the following facts to have been established in this cause:

178 1st. That the Church of Jesus Christ of Latter-Day Saints was, from the 19th day of February, 1865, to the 3rd day of March, A. D. 1887, a corporation for religious and charitable purposes, duly organized and existing under and in pursuance of an ordinance enacted by the Legislature of the Territory of Utah and approved by the Governor thereof on the said 19th day of January, A. D. 1855, a copy of which ordinance is made a part of the complaint herein.

2. That on the 19th day of February, A. D. 1887, the Congress of the United States passed an act entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22nd 1882, which purported to disapprove, repeal, and annul the said charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints aforesaid and passed as aforesaid.

3. That immediately before the passage of said act of Congress of February 19th, 1887, the said John Taylor was, and for a long time prior thereto had been, the qualified and acting trustee in trust of said corporation of the Church of Jesus Christ of Latter-Day Saints; that after the passage of said act of Congress of February 19th, 1887, the said John Taylor claimed to hold and continued to exercise the powers conferred upon said Church of Jesus Christ of Latter-Day Saints by said act of incorporation until his death, which occurred on the 25th day of July, A. D. 1887.

179 4. That at the date of the passage of said act of Congress of February 19th, A. D. 1887, and for a long time prior thereto there were no assistant trustees of said corporation, none having been elected, appointed, or qualified since the year 1887; that said Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor were, at the commencement of this suit, counsellors and advisers of the said John Taylor, and continued to his death counselling and advising him respecting the management, use, and control of the property hereinafter described.

5. That since the passage of said act of Congress of Feb. 19th, 1887, the Church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the acting president, and it has had duly designated and appointed

by the probate court of Salt Lake county, in said Territory, in pursuance of the act of Congress aforesaid, the following-named trustees, William B. Preston, Robert T. Burton, and John R. Winder, to take the title to and hold such real estate as shall be allowed said religious sect by law for the erection and use of houses of worship, parsonages, and burial grounds.

6. That at the time of the passage of said act of Congress of February 19th, 1887, there were no outstanding debts of or claims against said corporation, so far as appears to the court from the evidence herein.

180 7. That at the time of the passage of the act of Congress of February 19th, 1887, the said corporation owned, held, and possessed the following real estate in said Territory, to wit:

1. All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, known as the Temple block, of the value of $500,000.

2. All the east half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake county, Utah Territory, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning, known as the Guardo house and grounds, of the value of $50,000.

3. Part of the west half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake county, Utah Territory, and bounded as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the Historian's office and grounds, and is of the value of $20,000.

4. Part of lots three (3) and four (4), in block eighty-eight (88), as the same are platted and designated on plat "A," Salt Lake City survey, county of Salt Lake, Utah Territory, and bounded as follows:

181 Commencing at a point four (4) rods north of the southwest corner of said lot four (4), running thence north sixteen (16) rods, thence east twenty (20) rods, thence south twelve and one-half ($12\frac{1}{2}$) rods, thence west fourteen (14) rods, thence south three and one-half ($3\frac{1}{2}$) rods, thence west six (6) rods to the place of beginning, and being part of what is known as the tithing office and grounds, and is of the value of $50,000.

5. All the south half ($\frac{1}{2}$) of lots five (5) and six (6), in block eighty-eight (88), as the same are platted and designated in plat "A," Salt Lake City survey, in the county of Salt Lake, Utah Territory, said tract containing two hundred square rods of land, more or less, and being a part of what is known as the tithing office and grounds, and is of the value of $25,000.

6. All those certain tracts or parcels of land situate, lying, and being in Salt Lake county, Territory of Utah, known as the "church farm," described and bounded as follows, to wit:

All that portion of lots 10, 11, 12, 13, and 14, block 38, big field ten-acre plot territorial survey, containing 16.72 acres, which is

included within the limits of the N. E. ¼ of section 24; also the east ½ of the N. E. ¼; also parts of lots 1 and 5, commencing at a point south 14 rods from the N. E. corner of lot 1, section 23, thence west 48.4 rods; thence south 96 rods; thence S. 19 degrees E. 11.2 rods to the west bank of water ditch; thence along the west bank of said water ditch south 25 degrees west 44 rods, more or less, to the south line of the N. E. ¼ of section 23; thence east 47 rods, more or less, to the S. E. corner of lot 5; thence N. 146 rods to place of beginning, containing 73.35 acres, more or less.

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Also one-half of the street on the N. side of all the above-described land, containing 1.62 acres, more or less; also part of the S. W. ¼ of section 24, commencing at a point 28 rods west from the S. E. corner of said ¼ section, thence running N. 30 degrees E. 56 rods to the east line of said ¼ section; thence N. 111½ rods to the center of said section; thence W. 160 rods; thence south 160 rods; thence east 132 rods to place of beginning, containing 156.38 acres, more or less.

Also lots 6 and 9, in section 23, and lots 1 and 4, in section 26, containing 127 acres, more or less; also part of the S. E. ¼ of section 23, commencing at the N. E. corner of said quarter section, thence running south 160 rods; thence west 160 rods; thence N. 104 rods, more or less, to the river Jordan; thence down said river 9 rods, more or less; thence east 2 rods; thence along the east bank of water ditch north 25 degrees east 56.2 rods; thence east 127 rods to place of beginning, containing 154.22 acres, more or less; also part of the S. E. ¼ of section 26, containing 127 acres, more or less; also part of the N. W. ¼ of section 24, commencing 14 rods south from the N. E. corner of said ¼ section, thence running W. 160 rods; thence south 146 rods; thence east 160 rods; thence north 146 rods to place of beginning, containing 146 acres, more or less; also ½ of the street on the N. side of said quarter section, containing two acres; also part of the N. W. ¼ of section 25, commencing at the S. W. corner of said quarter section, thence running north 160 rods; thence E. 132 rods; thence S. 30 degrees west 92 rods; thence S. 69.6 rods; thence W. 50 rods; thence south 12.3 rods; thence west 236 rods to place of beginning, containing 93.38 acres, more or less.

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Also the N. E. ¼ of section 26, containing 160 acres.

All of the above-described lands are situated in township one (1) south, of range one (1) west, United States survey of Utah.

Excepting, however, therefrom the following-described tract of land, conveyed to the Denver & Rio Grande and Western Railway Company by deed dated February 7th, 1882: Beginning in the center of the D. & R. G. W. R. R. track 12 rods south and 30 rods east from N. W. corner of N. W. ¼ of section 24, township one (1) south, range one (1) west, Salt Lake meridian, thence east 50 feet; thence south, parallel with and 50 feet distant from the center of said R. R. track, 4,381.6 feet to a two-degree curve; thence southerly, on the east side along said 2-degree curve and fifty feet from center of said R. R. track, 731 feet; thence S. 14¾ degrees E. 2,535½ feet; thence west 100 feet; thence north 14¾ degrees west 2,535½ feet; thence

northerly, along said 2-degree curve on west side thereof and 50 feet distant from the center of said R. R. track, 731 feet; thence north 4,381.6 feet; thence east 50 feet to place of beginning, containing
17.56 acres of land, lying within the limits of the W. ½ of
184 section 24 and west ½ of N. W. ¼ of section 25, township and range aforesaid, said deed being recorded February 7th, 1882, in Book "S" of Deeds and Transfers, pages 451 and 452, records of Salt Lake County, U. T.; that said property is known as the church farm, and is of the value of $110,000.

7. The undivided half of the following-described tract of land: The south half (½) of the southeast quarter (¼), the southeast quarter (¼) of the southwest quarter (¼), and lot four (4), section eighteen (18), and the north half (½) of the northeast quarter (¼), in section nineteen (19). All of said land is in township three (3) north, of range six (6) east, in Summit county, Utah Territory, of the value of $30,000.

The legal title to the real estate first above described, known as the Temple block, at the time said act of Feb. 19th, 1887, went into effect was in John Taylor, as trustee in trust for the said corporation, which said trustee in trust subsequently and on the 30th day of June, 1887, attempted to convey the same to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, by a certain instrument in writing in the words and figures following, to wit:

185 This indenture, made on this thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-seven, by and between John Taylor, trustee in trust of that certain body of religious worshippers called and known as the Church of Jesus Christ of Latter-Day Saints, party of the first part, and William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas, by an act of Congress entitled "An act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it is, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Prove City, in Utah county, Utah Territory, the authorities of said church by unanimous vote were then and there
requested to name and nominate, as the trustees to hold
186 certain real property located it Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William

B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property belonging to said church in said county the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property, as trustees, that might be transferred to them pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon
187 them by virtue of said nomination and order of appointment; and

Whereas the said party of the first part has been for many years the trustee in trust of said body of religious worshippers, and has been so designated and known, and as such has up to this time held certain property of said religious worshippers in trust for them, a part of which said property is hereinafter described, and that said body of religious worshippers are for the most part inhabitants of Utah Territory, and that said property is hereby conveyed to the said parties of the second part in trust for said beneficiaries, and on the trusts and limitations and with the reservations and powers hereafter named:

Now, therefore, this indenture witnesseth: That the party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey, unto the said parties of the second part, as joint tenants and not tenants in common, and to their successors, duly appointed, upon trust, and to their assigns forever the property above referred to and which is particularly described as follows, to wit: All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, together with and including all and singular the
188 tenements, hereditaments, and appurtances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof:

To have and hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivor or survivors of them and to their successors, duly appointed, and to their assigns forever, for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust the title to said property shall not be deemed to be in abeyance, but shall be — in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there be one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members
189 thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed. The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this 30th day of June, 1887.

JOHN TAYLOR. [SEAL.]
SAMUEL BATEMAN. [SEAL.]
JAMES E. MALIN. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

190 UNITED STATES OF AMERICA,

TERRITORY OF UTAH, } ss:
County of Davis, }

On this thirtieth day of June, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, Joseph Barton, a notary public in and for said county, duly appointed, commissioned, and qualified, John Taylor, whose name is subscribed to the annexed instrument as the first party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as the party of the first part, and duly acknowledged to

me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, at Kaysville city, Davis county, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JOSEPH BARTON,
Notary Public.

191 The said Temple block was taken possession of by the agents of the said Church of Jesus Christ of Latter-Day Saints, then existing as a voluntary unincorporated religious sect, when Salt Lake City was first laid out and surveyed, in 1848, and since said date has been in possession of said church as a voluntary religious sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of as aforesaid it was a part of the public domain and continued to be such until said land was entered by the mayor of said city, along with other lands, on the 21st day of November, 1871, under the town-site act of Congress entitled "An act for the relief of cities and towns upon the public lands," approved March 2nd, 1867; that on the 1st day of June, 1872, the same was conveyed by the mayor of said Salt Lake City to the trustee in trust of said corporation, in whom the title remained until the act of Congress of February 19th, 1887, took effect.

The facts in regard to the possession and acquisition of the balance of said real estate above described are as follows: The second property, above described and known as the Guardo house and grounds, was owned by Brigham Young individually at the time of his death, in 1877, and was thereafter transferred and conveyed by his executors to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints, for a valuable consideration, pursuant to the powers in them vested by the
192 will of the said Brigham Young; that subsequently, on the 24th day of April, 1878, the said John Taylor, as trustee in trust, transferred and conveyed the same to Theodore McKean on a secret trust for said corporation, who held the same upon said trust until the 2nd day of July, 1887, when he attempted to convey the same to William B. Preston and Robert T. Burton and John R. Winder, trustees, by a certain instrument in writing, of which the following is a copy:

193 This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Theodore McKean and his wife, Mary P. McKean, parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas, by an act of Congress entitled "An an act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for

other purposes," approved March 3rd, 1887, it is, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in the Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah county, Utah Territory, the authorities of said church by unanimous vote were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said bodies of religious worshippers, William B. Preston, presiding bishop of said church, and his
194 two counsellors, Robert T. Burton and John R. Winder; that, pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as trustees to hold the real property belonging to said church in said county the said parties hereto of the second part; that, pursuant to such nomination and the filing of said paper, the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees, to hold the property as trustees that might be transferred to them pursuant to the law aforesaid, and the said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment:

Now, therefore, thisinden ture witnesseth: That the parties of the first part, in consideration of the premises and the sum of one dollar to them in hand paid by the said parties of the second part,
195 the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and — these presents do grant, bargain, sell, and convey, unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors, duly appointed, upon trust, and to their assigns forever the property particularly described as follows, to wit: All of the east half of lot six (6), in block seventy-five (75), plat A, Salt Lake City survey, and

bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods; thence east ten (10) rods to the place of beginning, together with and including all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof; to have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them, and to their successors, duly appointed, and to their assigns forever for the use, benefit, and behoof of the president or leader of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints for a residence or parsonage and to and for such use as the president or leader of said church, by whatever name designated, shall, name, dictate, and appoint.

In any case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of
196 the death of one of said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints if there is one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof, but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title is vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this second day of July, 1887.

THEO. McKEAN. [SEAL.]
MARY P. McKEAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
FREDERICK KESLER.

197 UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake county, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Theodore McKean and Mary P. McKean, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who each of them acknowledged to me that they, each of them respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Mary P. McKean, wife of the aforesaid Theodore McKean, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband, for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

198 In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, at Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

199 That said Guardo house and grounds were used and occupied by said John Taylor, president of said church, from 1878 up to the time of his death as a residence.

The third property above described, known as the historian's office and grounds, was taken possession of by Albert T. Rockwood in 1848 and was a part of the public domain, and continued to be such up to the 21st day of November, 1871, when the town site of Salt Lake City was entered as aforesaid; that on the 3rd day of October, 1855, the Church of Jesus Christ of Latter-Day Saints, through its trustee in trust, Brigham Young, purchased the said Rockwood's claim to said premises and at its own cost and expense erected thereon the building which has ever since been known as the historian's office and residence; that said building was large enough to accommodate the historian's family and furnish an office for the church historian; that from the year 1848 until the time of his death in 1875, George A. Smith was the historian of said church and lived in said building with his family and had the custody of the books, papers, and records of said church relating to its history or public acts of its officers and members; that the same have always been kept

in said building from the time of its construction until the present time, at the cost of said church, and that such office is and has been necessary for the use of said historian in the discharge of his duties; that in 1872 the said George A. Smith obtained the title to said premises from the mayor of Salt Lake City under the town-site act, and that after his death the same was conveyed to his
200 wife and one of his grand-daughters who afterwards transferred and conveyed the same to Theodore McKean for a valuable consideration; that the said Theodore McKean has ever since that date held and now holds the same on a secret trust for the use and benefit of said corporation; that said grounds are immediately west of and adjoining the Guardo-house grounds.

The fourth property above described, known as part of the tithing office and grounds, was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time has been used and occupied by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation, receiving and disbursing tithing and voluntary contributions of property, and that prior to July 1st, 1862, buildings and other improvements of considerable value had been built thereon by said church; that at the time said property was taken possession of as aforesaid it was a part of the public domain and continued to be such until the 21st day of November, 1871, when said land was entered as aforesaid along with other lands under said town-site act by the mayor of Salt Lake City; that Brigham Young, who was then president and trustee in trust of said corporation, claimed said land under said town-site law and it was conveyed to him by Daniel H. Wells, mayor of Salt Lake City; that in November, 1873, Brigham Young transferred and conveyed said property to George A. Smith, as
201 the trustee in trust of the corporation of the Church of Jesus Christ of Latter-Day Saints, and his successor in office; that on the death of said George A. Smith the legal title in said premises vested in Brigham Young as such successor, and the executors of said Brigham Young transferred and conveyed said property to John Taylor, as the trustee in trust of said corporation, who, in April, 1878, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; that said Edward Hunter afterwards, to wit, on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation, and on the 2nd day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder, and himself, as trustees, by a certain instrument in writing in the words and figures following, to wit:

202 This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Robert T. Burton and his wife, Maria S. Burton, the parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints,

and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas, by an act of Congress entitled "An act to amend an act entitled An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it, among other things, provided "that all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah county, Utah Territory, the authorities of said church by unanimous vote were then and there requested to name and nominate, as trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

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That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake county, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property belonging to said church in said county the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being fully informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property, as trustees, that might be transferred to them pursuant to the law aforesaid; and

204

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; and

Whereas the said Robert T. Burton, one of the parties of the first part, has been for many years a trustee holding certain real property for said religious worshippers in trust for them, which said property is hereinafter described:

Now, therefore, this indenture witnesseth: That the parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors duly appointed, upon trust, and to their assigns forever, the property above referred to and which is particularly described as follows, to wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half ($22\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, containing two and $\frac{57}{100}$ acres—

Together with and including all and singular the tenements,
205 hereditaments, and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof; to have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them and to their successors duly appointed and to their assigns forever, for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints and to and for such use as said church or its duly constituted authorities shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary, and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of said Church of Jesus Christ of Latter-Day Saints, if there is one at that time; if not, in such person as shall be

at that time deemed and acknowledged to be the head of said
206 church by the members thereof; but on the nomination and appointment of new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts — confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this second day of July, 1887.

ROBERT T. BURTON. [SEAL.]
MARIA S. BURTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN KIRKMAN.
WALTER MUSSER.

207 UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake county, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Robert T. Burton and Maria S. Burton, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who, each of them, acknowledged to me that they, each of them, respectfully executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Maria S. Burton, wife of the aforesaid Robert T. Burton, on being examined by me separate and apart from and without the hearing of her said husband and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

208 In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in Salt Lake City, U. T., the day and year in this certificate first above written.

JAMES JACK,
Notary Public for Salt Lake County, U. T.

209 The fifth piece of property above described, known as part of the tithing office and grounds, was possessed, acquired, and owned as follows:

In the year 1848 Newell K. Whitney, then presiding bishop of said Church of Jesus Christ of Latter-Day Saints, took possession of lot five, block eighty-eight, plat A, Salt Lake City survey, and in the same year Horace K. Whitney took possession of lot six, in said block; that some time in the year 1856 the Church of Jesus Christ of Latter-Day Saints, by its agents, took possession of the south half of said lots and placed thereon yards and corrals, and have con-

tinued to occupy the same with said yards and corrals down to this period; that in the year 1870 the mayor of Salt Lake City entered the town site of Salt Lake City, in trust for the inhabitants and occupants thereof, under the law of 1867; that the foregoing lots are a portion of said entry.

The said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court for a title to the south half of said lots, and the heirs of Newell K. Whitney also filed an application in the proper court for the south half of lot five, and Horace K. Whitney filed an application in the same court for the south half of lot six. The court awarded the title to the said premises to Brigham Young, as trustee as aforesaid.

210 That afterwards, in the year 1872, Brigham Young, trustee, obtained a deed from the heirs of Newell K. Whitney to said south half of lot five, and in consideration thereof paid them seven thousand dollars, and at the same time the said Brigham Young, trustee, obtained a deed from Horace K. Whitney of lot six and paid him therefor the sum of two thousand dollars.

At the time the act of Congress of February 19th, 1887, took effect the legal title thereto was held by Robert T. Burton on a secret trust for the use and benefit of said corporation; that on the 2nd day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder, and himself, as trustees, by that certain instrument of writing hereinbefore last set out.

The remainder of said real estate held, owned, and possessed by said corporation as aforesaid was acquired by it after the first day of July, 1862, by purchase, but the legal title thereof was at all times held by persons in trust for said corporation upon secret trusts, and not by the corporation itself.

That at the time the said act of Congress of February 19th, 1887, took effect said corporation owned, held, and possessed the following-described personal property, to wit:

211 One large safe.
One medium-sized iron safe.
25 arm chairs.
11 rotary chairs.
10 upholstered chairs.
Two desks.
One letter-press.

800 shares of $100 each of the capital stock of the Salt Lake Gas Company.

4,732 shares of $100 each of the capital stock of the Deseret Telegraph Company.

One promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order two years after date, calling for the sum of $13,333.32, bearing six per cent. interest from date, signed Sharp and Little.

One promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order two years after date and call-

ing for $1,666.66, with six per cent. interest from date, signed Le Grand Young.

One promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, in two years from date, calling for $4,833.33, with six per cent. interest from date, signed by James Jack.

One promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust, or order in two years from date, calling for $5,000, with six per cent. interest from date, and signed by H. B. Clawson.

212 Thirty thousand one hundred and fifty-eight (30,158) sheep.

$237,666.15, money, proceeds of sales of miscellaneous property.

That since said personal property came into the possession of the receiver heretofore appointed in this cause he has collected as rent from the said real estate, $2,850; as dividends on said gas stock, $4,900; as interest on said money, $2,233.60.

That the said corporation of the Church of Jesus Christ of Latter-Day Saints was in its nature and by its statute of incorporation a religious and charitable corporation for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said church, and for the purpose of dispensing charity, subject and according to said principles, practices, teachings, and tenets, and that from the time of the organization of said corporation up to the time of the passage of said act of February the 19th, 1887, it never had any other corporate objects, purposes, and authority; never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized under its act and charter of incorporation to take or hold any personal property or estate of said corporation, except the trustees provided for by said statute of incorporation.

That the said personal property hereinbefore set out had been accumulated by said late corporation prior to the passage
213 of said act of February the 19th, 1887, and that such accumulation extended over a period of twenty years or more; that prior to and at the time of the passage of said act the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets, and practices of the said late church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of — corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are

substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.

That certain of the officers of said religious sect regularly ordained and certain public preachers and teachers of said religious sect, who are in good standing and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February the 19th, 1887,
214 promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation, and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect.

That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of or in trust for the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints or any of them would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

That at the commencement of this suit all of said personal property was in the possession of the said William B. Preston, who held it in trust and for the benefit of said corporation.

That all of the above-described property, real and personal, is now in the possession of Frank H. Dyer, receiver of this court.

215 That of the above-described real estate the following tract, including the buildings thereon, situated in said county of Salt Lake, Territory of Utah, and being all of block eighty-seven (87), in plat A, Salt Lake City survey, at the time of the passage of the act of Congress of February 19th, 1887, was used exclusively for the worship of God according to the doctrines and tenets of the Church of Jusus Christ of Latter-Day Saints.

That several proceedings have been instituted by and with the consent and advice of this court, by information, on behalf of the United States of America, in the third district court of said Territory of Utah, for the purpose of having declared and adjudged forfeited and escheated to the Government of the United States all of the above-described real estate, excepting the said block eighty-seven of plat A, Salt Lake City survey, last above mentioned, by virtue of the said act of Congress entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," which proceedings are now pending in said court and undetermined.

It is therefore adjudged and decreed by the court upon the facts ascertained and declared as aforesaid as follows, to wit:

216 That on the 3rd day of March, 1887, the corporation of the Church of Jesus Christ of Latter-Day Saints became and the

same was dissolved, and that since said date it has had no legal corporate existence.

2nd. It is furthermore adjudged and decreed that the following alleged deeds, hereinbefore set out, were executed without authority, and that no estate in the property set out in said deeds passed by the same or any of them, to wit:

The deed dated June 30th, 1887, from John Taylor, trustee in trust, to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for the property described as the "Temple block." The deed dated July 2nd, 1887, from Theodore McKean and his wife to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for property known as the "Guardo house" and grounds. The deed dated July 2nd, 1887, from Robert T. Burton and wife to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for the property described as the "tithing house" and grounds.

And it is therefore ordered and decreed that said alleged deeds and each of them be, and the same are hereby, annulled, cancelled, and set aside.

3rd. It is further adjudged and decreed that the following-described real estate, to wit, all of block eighty-seven, in plat A, Salt Lake City survey, in the city and county of Salt Lake, Territory of Utah, be, and the same is hereby, set apart to the voluntary religious worshippers and unincorporated sect and body known as the Church of Jesus Christ of Latter-Day Saints, and that the
217 said William B. Preston, Robert T. Burton, and John R. Winder, trustees appointed by the probate court of Salt Lake county, as hereinbefore set out, do hold, manage, and control said property so set aside for the benefit of said voluntary religious worshipers and unincorporated sect and body, and for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body; and it is ordered that Frank H. Dyer, receiver of this court, heretofore appointed, do surrender and deliver possession and control of all of the property so set aside to the trustees, William B. Preston, Robert T. Burton, and John R. Winder, aforesaid.

4th. It is furthermore adjudged and decreed that, except as to the Temple block aforesaid, the petitions of William B. Preston, Robert T. Burton, and John R. Winder, trustees, filed the 6th day of October, 1888, in this court for the setting aside of certain real estate for the uses and purposes of the religious sect known as the Church of Jesus Christ of Latter-Day Saints be, and the same are hereby, denied; and it is adjudged and decreed that the balance of the real estate over and above said Temple block, which has been hereinbefore found as belonging to said late corporation, has not nor has any of it ever been used as buildings or grounds appurtenant thereunto for the purposes of the worship of God or of parsonages connected therewith, or for burial grounds by the said late corporation
218 of the Church of Jesus Christ of Latter-Day Saints, nor is the said real estate, except as set aside, or any part thereof nec-

essary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

5th. It is furthermore adjudged and decreed that all of the real estate set out in the findings of fact hereinbefore was the property of and belonged to the late corporation of the Church of Jesus Christ of Latter-Day Saints, and the same was held in trust for said corporation; and, furthermore, that the legal titles of and estates in said real estate and every part and parcel thereof were acquired by said late corporation and its trustees subsequently to July 1st, 1862, and that prior to said date neither the said corporation nor its trustees had any legal title or estate in and to said real estate or any part thereof.

6th. And it is further adjudged and decreed that the petition of intervention by George Romney, Henry Dinwoodey, James Watson, and John Clark, on behalf of themselves and other members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, filed this day in this court, which said petition alleges the claim on behalf of the petitioners and those for whom it is filed, in and to the real and personal property formerly belonging to said late corporation and now in the hands of the receiver of this court be, and the same is hereby, denied; and it is adjudged and decreed that neither said interveners nor those in whose behalf they filed said
219 petition have any legal claim or title in and to said property or any part thereof.

7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution and do not now exist any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used or to which it could be dedicated that were and are not in whole or in part opposed to public policy, good morals, and contrary to the laws of the United States; and, furthermore, that there do not exist any natural persons or any body, association, or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-Day Saints, nor have there been nor are there now any trusts of a definite and legal character upon which this court, sitting as a court of chancery, can administer the personal property hereinbefore set out; and it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-Day Saints has by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the trusts
220 to which it was dedicated at its acquisition and for which it had been used by said late corporation and by operation of law, become escheated to and the property of the United States of America, subject to the costs and expenses of this proceeding and of the receivership by this court instituted and ordered.

8th. It is furthermore ordered and adjudged that there is not now

and has not been since the 3rd day of March, 1887, any person legally authorized to take charge of, manage, preserve, and control the personal and real property hereinbefore set out, except the receiver heretofore appointed by this court; and it is therefore ordered that the receivership hereinbefore established by this court is continued in full force and effect, and that the said receiver shall continue to exercise all and entire the powers and authority conferred upon him by the decree appointing him; and it is further ordered that he do continue in his possession and keeping all of the property, real and personal, hereinbefore set out, except such realty as has been set apart by the provision of this decree for the benefit of the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints, and that he do safely keep, manage, and control the same in accordance with the provisions of the order of this court appointing him receiver, pending the determination of the proceeding upon information hereinbefore referred to and until the further order of this court; and final action upon and determination concerning
221 the accounts, proceedings, and transactions of said receiver and all matters connected with or incidental thereto are ordered to be reserved for the future consideration and decision of this court.

ELLIOT SANFORD,
Chief Justice Supreme Court, Territory of Utah.

Thereupon the defendants in said action, each and all thereof, by their counsel and attorney, P. S. Richards, Esq., ask the allowance of an appeal from the foregoing judgment and decree to the Supreme Court of the United States, and that the amount of a bond to be given on such appeal be now fixed. On consideration whereof it is ordered that such appeal be, and it is hereby, allowed, and that the amount of a bond to be given thereon be, and is hereby, fixed at five hundred dollars.

[Endorsed:] Filed 8th Oct., 1888. E. T. Sprague, clerk.

222 Know all men by these presents that we, James Jack and A. H. Carlson, both of the city and county of Salt Lake and Territory of Utah, are held and firmly bound unto the United States in the full and joint sum of five hundred dollars, to be paid to the said United States, its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of October, A. D. 1888.

Whereas lately, at a session of the supreme court of Utah Territory, in a suit pending in said court between the United States, respondent, and The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.*, appellants, judgment was rendered against the said appellants, and the said appellants have obtained an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES JACK. [SEAL.]
C. H. CARLSON. [SEAL.]

Sealed and delivered in presence of—
D. M. McKENZIE.
DAVID L. MURDOCK.

223 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

James Jack and A. H. Carlson, the persons named in and who subscribed the foregoing bond as the sureties thereto, being severally duly sworn, each for himself says that he is worth the amount specified in said bond as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident and freeholder within the Territory of Utah.

JAMES JACK.
A. H. CARLSON.

Subscribed and sworn to before me this 12th day of October, A. D. 1888.

[SEAL.] NEPHI W. CLAYTON,
Notary Public.

[Endorsed:] The United States *vs.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.* Appeal bond. Approved Oct. 13th, 1888. Elliott Sanford, C. J. supreme court Utah. Filed Oct. 13th, 1888. E. T. Sprague, clerk.

224 TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in pursuance of an appeal allowed by said court in the cause of The United States of America, plaintiffs, *vs.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints and others, defendants, do herewith transmit, annexed hereto, to the Supreme Court of the United States a transcript of the record and proceedings of said court in said cause, to wit, the bill of complaint, order for process and service thereof, demurrer of defendants, submission thereof, order appointing receiver, order making Preston, Burton, and Winder additional defendants therein, demurrer of last-named defendants, order overruling both demurrers, opinion of court thereon, answer of defendant, Late Corporation, answer of other original defendants, answer of Preston, Burton, and Winder, replications to each of said answers, order making T. McKean defendant, order making A. M. Cannon defendant, answer of said Can-

non, order making Armstrong and Fox defendants and granting leave to file three several petitions for the setting apart of real property to church, answer of Armstrong, Fox, and McKean,
225 replication to such answer, the three several petitions for setting apart real estate to church aforesaid, answers to each of said petitions and replications to said last-mentioned answers, order granting leave for petition in intervention, petition in intervention, answer thereto and replication to such answer, findings and decree of court and allowance of appeal and bond on appeal; and I hereby certify that said annexed and foregoing transcript of said record and proceedings, consisting of the said enumerated pleadings, orders, opinion, bond, decree, findings, and allowance of appeal, is a full, true, correct, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand and affix the seal of said supreme court of Utah Territory this the 20th day of October, A. D. 1888, at Salt Lake City.

[Seal Supreme Court, United States of America, Territory of Utah.]

E. T. SPRAGUE, *Clerk.*

Endorsed on cover: Utah Territory supreme court. No. 1423. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.*, appellants, *vs.* The United States. Filed October 26, 1888.

226 *Appeal. Petition.*

In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, Defendants.

To the Hon. Elliott Sanford, chief justice of the supreme court of Utah Territory:

Your petitioners most respectfully represent that they are some of the parties who by permission of the supreme court of Utah Territory intervened in behalf of themselves and other members of the Church of Jesus Christ of Latter-Day Saints in the above-entitled action.

That on the eighth day of October, 1888, the said supreme court of Utah Territory made and entered its final decree in the foregoing-named suit in favor of said plaintiff and against said defendants and your petitioners, said interveners.

227 Your petitioners further represent that since said decree said supreme court of Utah Territory has adjourned, and the same is not now in session; that your petitioners are desirous of taking an appeal from said order and decree and from the judgment therein named to the Supreme Court of the United States, and now hereby ask your honor, as chief justice of said territorial court, to allow said appeal and to fix the appeal bond of your petitioners, and as in duty bound they will ever pray.

GEORGE ROMNEY,
HENRY DINWOODEY,
JAMES WATSON, AND
JOHN CLARK,
By JAMES O. BROADHEAD,
F. S. RICHARDS,
LE GRAND YOUNG,
SHEEKS & RAWLINS,
Attorneys for said Interveners and Petitioners.

Endorsed: Filed December 12th, 1888. E. T. Sprague, clerk.

228 *Order.*

In the Supreme Court of the Territory of Utah.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-Day Saints and John Taylor, Late Assistant Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse Fox, Jr., and Theodore McKean, Defendants.

Be it remembered that on this 12th day of December, 1888, George Romney, Henry Dinwoodey, James Watson, and John Clark, by their attorneys, James O. Broadhead, F. S. Richards, Le Grand Young, Sheeks & Rawlins, made their petition in writing to me, Elliott Sandford, chief justice of the supreme court of Utah Territory, asking the allowance of an appeal from the decree of said supreme court made and entered October 8, 1888, in the case of The United States of America against The Late Corporation of the Church of Jesus Christ of Latter-Day Saints and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry
229 Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse Fox, Jr., and Theodore McKean, defendants, in which said action said petitioners had been allowed to file their petition of intervention, and it appearing to me, after considering the petition and upon notice to said plaintiff and of the full hearing—George S. Peters, United States district attorney for Utah Territory, representing the plaintiff, and Le Grand Young representing the interveners and defendants—that justice can be better served by allowing said petition, it is hereby ordered that said petition and appeal to the Supreme Court of the United States from the judgment and decree entered in said cause against said defendants and interveners by the supreme court of Utah Territory be, and the same is hereby, allowed, and the bond of said appellants is hereby fixed at the sum of five hundred dollars.

Witness my hand this 12th day of December, 1888.

ELLIOTT SANDFORD,
Chief Justice of the Supreme Court of Utah Territory.

Endorsed: Filed December 12, 1888. E. T. Sprague, clerk.

230 Know all men by these presents that we, John Sharp, James Sharp, and T. W. Ellerbeck, of Salt Lake City, in Utah Territory, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the

said United States of America, its certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas at a supreme court of the Territory of Utah, in a suit depending in said court between The United States of America, plaintiff, and The Late Corporation of the Church of Jesus Christ of Latter-Day Saints and John Taylor, trustee in trust; Wilford Woodruff, Lorenzo Snow, Erastus Snow, Eranklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, as defendants, and George Romney, Henry Dinwoodey, James Watson, and John Clark, were interveners, a judgment and decree was entered in favor of said plaintiff and against said defendants and interveners, and the said interveners, George Romney, Henry Dinwoodey, James Watson, and John Clark, having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to said United States of America, citing and admonishing it to be and appear at a Supreme Court of the United
231 States to be holden at Washington on the second Monday in January, 1889:

Now, the consideration of the above obligation is such that if the said George Romney, Henry Dinwoodey, James Watson, and John Clark shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN SHARP.
JAMES SHARP.
T. W. ELLERBECK.

Sealed and delivered in presence of—

——— ———.

Approved by me this 12th day of December, 1888.

ELLIOTT SANFORD,
Chief Justice.

Endorsed: Filed Dec. 12, 1888. E. T. Sprague, clerk.

232 Know all men by these presents that we, John Sharp James Sharp, and T. W. Ellerbeck, of the county of Salt Lake, Territory of Utah, are held and firmly bound unto the clerk of the Supreme Court of the United States in the full and just sum of two hundred dollars, lawful money of the United States, to be paid to said clerk, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas *the late* at a term of the supreme court of Utah Territory, in a suit depending in said court between The United States of America, plaintiff, against The Late Corporation of the Church of Jesus Christ of Latter-Day Saints and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse Fox, Jr., and Theodore McKean, defendants, a decree was rendered against said defendants and certain interveners, whose names are George Romney, Henry Dinwoodey, James Watson, and John Clark, and the said interveners having obtained an appeal to remove the said cause to the Supreme Court of the United States, and have filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the decree in the aforesaid suit:

233 Now, the condition of the foregoing obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said clerk or his heirs, executors, administrators, or assigns all such fees as shall accrue to him, the said clerk as aforesaid, and charged to the said interveners in the prosecution of said appeal, then the above obligation to be void; otherwise to be and remain in full force and virtue.

JOHN SHARP.
JAMES SHARP.
T. W. ELLERBECK.

Sealed and delivered in presence of—

——— ———.

I, Elliott Sanford, chief justice of the supreme court of Utah Territory, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

(Signed) ELLIOTT SANFORD,
Chief Justice.

Endorsed: Filed Dec. 12th, 1888. E. T. Sprague, clerk.

234 *Citation.*

TERRITORY OF UTAH, *County of Salt Lake:*

In the Supreme Court of Utah Territory.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation; William B. Preston, Robert T. Burton, John R. Windor, Francis Armstrong, Jesse Fox, Jr., and Theodore McKean, Defendants.

The United States of America, Greeting:

United States of America, plaintiff in the foregoing-named action:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 14th day next of January, 1889, pursuant to an appeal filed in the clerk's office of the supreme court of Utah Territory, wherein George Romney, Henry Dinwoodey, James Watson, and John Clark are plaintiffs in error, to show cause, if any there be, why the decree rendered against said interveners, plaintiffs in error, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

235 Witness the Honorable Elliott Sandford, chief justice of the supreme court of the Territory of Utah, on this 12th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

ELLIOT SANDFORD,
Chief Justice S. C.

236 On this 12th day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Le Grand Young before me, the subscriber, B. W. Driggs, Jr., a notary public within and for Salt Lake county, Utah Territory, and makes oath that he delivered a true copy of the within citation to George S. Peters, United States district attorney for the Territory of Utah.

[Seal B. W. Driggs, Jr., Notary Public, Salt Lake County, Utah.]

B. W. DRIGGS, JR.,
Notary Public.

[Endorsed:] Filed Dec. 12, 1888. E. T. Sprague, clerk.

237 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of the Territory of Utah, in pursuance of an appeal allowed by the chief justice of said court to certain interveners in the suit of The United States of America *vs.* The Late Corporation of the Church of Jesus Christ of Latter-Day Saints and others, do transmit annexed hereto a transcript of the petition for and order of allowance of said appeal, of the bonds for costs and on appeal thereon, with original citation and proof of service thereof, to the Supreme Court of the United States; and I hereby certify that said transcript of said petition, order, and said bonds is a true, full, correct, and complete copy of the several originals thereof on file in my office.

Witness my hand and the seal of said supreme court of Utah Territory this 13th day of December, A. D. 1888, at Salt Lake City.

[Seal Supreme Court Territory of Utah, United States of America.]

E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

[Endorsed:] Copy bond.

238 *Stipulation of Facts on Motion for the Appointment of a Receiver.*

In the Supreme Court of the Territory of Utah, of —— Term. In Equity.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST of Latter-Day Saints and John Taylor, Late Trustee in Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, Late Assistant Trustees in Trust of said Corporation, Defendants. } No. —.

For the purposes of this motion for the appointment of a receiver in the above-entitled cause and for no other purpose it is agreed that the following facts exist:

The act of Congress of 1887 entitled "An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," was received by the President of the United States on the 19th day of February, 1887, and was not approved by him nor returned to the House, in which it originated, with his objections.

239 John Taylor was trustee in trust for the defendant, The Church of Jesus Christ of Latter-Day Saints, when such act took effect, and he claimed to be and continued to exercise the powers

of such trustee in trust until his death, on the 25th day of July, 1887. No successor to said John Taylor as trustee in trust has been elected or appointed for said Church of Jesus Christ of Latter-Day Saints, but Wilford Woodruff is now president of said church.

The defendants, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, were never assistant trustees of the corporation, the Church of Jesus Christ of Latter-Day Saints, never having been elected, appointed, or qualified as such, and no such assistant trustees as provided for by the act of incorporation were ever elected or appointed for the said John Taylor; but said last-named defendants and each of them were the counsellors and advisers of the said John Taylor, and advised with him regarding the religious and charitable works and affairs of said church and regarding the management, use, and control of the property belonging to said church.

When said act took effect the defendant, The Church of Jesus Christ of Latter-Day Saints, by and through certain trustees, held and owned three certain pieces, tracts, or parcels of real estate, described as follows, to wit:

240 All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, known as the Temple block, and containing ten acres of land.

That tract of land commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), plat A, Salt Lake City survey, thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods to the place of beginning, containing two and $\frac{57}{160}$ acres, known as the tithing houses and grounds.

All that portion of lot (6), in block seventy-five (75), in plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west eighteen (18) rods; thence north ten (10) rods; thence east eighteen (18) rods to the place of beginning, known as the Guardo house and grounds and the Historian office and grounds. All of the above-described real estate is situated in the town-site entry of Salt Lake City, and the said land was patented by the United States to the mayor of said city on the first day of June, A. D. 1872.

The defendant, the said Church of Jesus Christ of Latter-Day Saints, had occupied and claimed to possess the first of above-named tracts or parcels of real estate prior to the first day of July, 1862; which said premises are described as follows:

241 All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory.

That the second tract of land above described as the tithing house and grounds was occupied and used by said Church of Jesus Christ of Latter-Day Saints as a tithing house prior to 1862.

That the patent to said land having been issued as aforesaid a deed therefor was executed to Brigham Young in his individual name; that he held the title in his individual name until his death, and

after his death the church authorities claimed said tract as property held in trust for said church, and that in pursuance of said claim the executors of Brigham Young conveyed said property to John Taylor, trustee in trust for said church. Brigham Young at the time said conveyance was made to him was trustee in trust for said church.

The said defendant, The Church of Jesus Christ of Latter-Day Saints, has acquired since July 1st, 1862, to wit, in July, 1878, the tract of real estate described as follows: All the east half of lot six (6), in block seventy-five (75), plat "A," Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west eighteen (18) rods; thence north ten (10) rods; thence east eighteen (18) rods to the place of beginning.

The piece of real estate first above described, to wit, all of
242 block eighty-seven (87), in plat A, Salt Lake City survey, had been prior to 1862 occupied and possessed by said Church of Jesus Christ of Latter-Day Saints and set apart for church purposes, and upon the same, prior to 1862, had been built a building known as the Tabernacle, and since 1862 has been built a building known as the Assembly Hall, and there has been partially built a structure known as the Temple, which was commenced prior to 1862.

Upon the northwest corner of said tract is the building known as the Endowment house. The Tabernacle and Assembly Hall are on the west half of said tract, and the Temple structure is on the east half of said tract. The entire tract is enclosed by a stone wall, and no part thereof has been used for any other purposes.

The piece of property known as the Guardo house was, after its acquisition and up to the time of the death of John Taylor, occupied by him as president of said church as his residence; and upon its acquisition a general conference of said Church of Jesus Christ of Latter-Day Saints designated said Guardo house as the residence of the president of said church, and it has been since so considered.

Claiming to act under the requirements of the twenty-sixth section of the act of Congress referred to in plaintiff's bill of complaint as having been passed Feb. 19th, 1887, application was made to the probate court in and for the county of Salt Lake, Utah Ter-
243 ritory, for the appointment of three trustees to take the title to and to have and to hold the said three tracts or parcels of real estate hereinbefore described, and the said court did, claiming to act pursuant to said section of said act of Congress, on the 19th day of May, 1887, appoint William B. Preston, Robert T. Burton, and John R. Winder trustees to take title and to have and to hold the said three tracts or parcels of real estate hereinbefore described, and afterwards deeds were executed purporting to convey and transfer the said three tracts of real estate to the said Preston, Burton, and Winder, claiming to be trustees by virtue of the proceedings aforesaid, and said tracts of land are now claiming to be held by said Preston, Burton, and Winder, claiming to be trustees for said church as aforesaid.

On the 29th day of February, 1887, John Taylor, who was then

trustee in trust for the Church of Jesus Christ of Latter-Day Saints, held in trust certain personal property, goods, and chattels of the aggregate value of $268,982.395, which it is claimed by the defendants and denied by the plaintiff had theretofore been contributed by the individual members of said church for the purpose of building temples and for other charitable and religious purposes. On said last-named date the said John Taylor, as trustee in trust, executed an instrument in writing, a copy of which is hereto attached and made part hereof, marked Exhibit "A."

244 That in pursuance of the provisions of the instrument aforesaid certain property, to the value approximately as set out below, was delivered to the following-named ecclesiastical church corporations created and existing under the laws of the Territory of Utah:

To the Church Association of Cache Stake of Zion	$45,036 09
To the Church Association of Box Elder Stake of Zion	16,745 18
To the Church Association of Weber Stake of Zion	11,480 06
To the Church Association of Morgan Stake of Zion	2,716 57
To the Church Association of Summit Stake of Zion	3,153 20
To the Church Association of Wasatch Stake of Zion	6,044 90
To the Church Association of Salt Lake Stake of Zion	32,702 70
To the Church Association of Tooele Stake of Zion	4,591 10½
To the Church Association of Juab Stake of Zion	3,049 03
To the Church Association of Utah Stake of Zion	25,000 00
To the Church Association of San Pete Stake of Zion	6,992 13
To the Church Association of Sevier Stake of Zion	15,445 50
To the Church Association of Millard Stake of Zion	14,083 89
To the Church Association of Beaver Stake of Zion	6,980 36
To the Church Association of Panguitch Stake of Zion	8,137 50
To the Church Association of St. George Stake of Zion	28,638 41
To the Church Association of Kanab Stake of Zion	38,185 77
Total	$268,982 39½

245 The members of the said stake corporations are members of the Church of Jesus Christ of Latter-Day Saints, and it is claimed by defendants and denied by plaintiff that they were substantially the original donors of said property in their respective stakes.

The Church of Jesus Christ of Latter-Day Saints was a corporation for the purposes set out in the act incorporating said church at the time the act of Congress of 1887, hereinbefore set out, took effect, and has claimed to exist as a corporation ever since that time.

The tithing house and grounds, as hereinbefore set out, are not and have never been used as a place of worship or parsonage connected therewith or as burial ground, nor are they appurtenant to any thereof.

The portion of the third tract of land set out in the first part of this agreement as the Guardo house and grounds and the Historian's

office and grounds, which is known as the Historian's office and grounds, comprises a tract about eight by ten rods. The building thereon is a three-story adobe building, about 35 by 45 feet. The grounds of the Guardo house and the grounds of the Aistorian's office are separated by a terrace and for a part of the way by an evergreen hedge.

The Historian's office and tract has been used as the office and residence of the historian of said church and as a depository for the records of said church and for library purposes, and has been so used since prior to 1862.

For the purposes of this motion the probable value of the real estate herein described is estimated as follows:

246 1. The Temple and Tabernacle block, one hundred and fifty thousand dollars.

2. The tithing house and grounds, twenty-five thousand dollars.

3. The portion of tract three known as the Guardo house and grounds, fifty thousand dollars.

4. The portion of tract three known as the Historian's office and grounds, ten thousand dollars.

The proceedings and resolutions hereto attached and made part hereof, marked Exhibit B, were held and passed at a general conference of the Church of Jesus Christ of Latter-Day Saints which was in session April 8th, 1887.

The exhibits hereto attached as a part hereof, marked Exhibit C, show the action of the church authorities in nominating trustees as provided for by said general conference, as set out in Exhibit B.

Nothing admitted or set out in this agreement shall in anywise bind a receiver, in case one be appointed by the court upon the motion pending, nor shall his powers be in anywise limited or abridged by anything herein set out.

The motion for a receiver now pending and the hearing thereon shall be determined upon this agreement of facts alone, neither party offering any evidence.

Dated October 19th, 1887.

GEO. S. PETERS, *U. S. Attorney.*
JAMES O. BROADHEAD,
J. E. McDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Attorneys and Counsel for Defendants.

247 EXHIBIT "A."

SALT LAKE CITY, *February 28th*, 1887.

Whereas, by and with the consent of my brethren of the first presidency and the twelve apostles of the Church of Jesus Christ of Latter-Day Saints, and with the approval, so far as I have been able to lay the matter before them, of the members of said church, and in consideration of the rights and powers in me vested and of the reservations and the uses to which the property herein named is to be put, I, John Tay-

lor, trustee in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints and president of said church, have, for the purpose of aiding the several stake organizations, concluded to convey to the respective corporations hereinafter named the personal property situated in the several counties of Utah, hereinafter designated as the certain stakes of Zion:

Now, therefore, in consideration of the premises and of the promise and agreement that the said grantees will faithfully carry out the trust and confidence herein and hereby imposed, and for other good and valuable considerations, and for the sum of one dollar to me in hand paid by each of the corporations named hereinafter, the receipt whereof is hereby acknowledged, I, John Taylor, trustee in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints, have
248 given, granted, and conveyed, and by these presents do give, grant, and convey, unto those several certain ecclesiastical corporations existing under the laws of Utah, the personal property existing in the several stakes of Zion in Utah Territory, which said corporations and stakes of Zion are designated and named as follows, to wit:

To the corporation called the Church Association of Cache Stake of Zion I hereby convey all the personal property located in Cache, Bear Lake, Bannock, and Oneida Stakes, held by me as such trustee or owned by said church at this date, situated in Cache county, Utah, and Bear Lake, Bingham and Oneida counties, Idaho Territory.

2nd. To the corporation called the Church Association of the Box Elder Stake of Zion I hereby convey all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Box Elder county, Utah Territory, and Cassia county, Idaho Territory.

3rd. To the corporation called the Church Association of Weber Stake of Zion I hereby convey all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Weber county, Utah Territory.

4th. To the corporation called the Church Association of Morgan Stake of Zion I hereby convey all the personal property
249 located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Morgan county, Utah Territory.

5th. To the corporation called the Church Association of Davis Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Davis county, Utah Territory.

6th. To the corporation called the Church Association of Summit Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at

this date, which is within the territorial limits of Summit county, Utah Territory.

7th. To the corporation called the Church Association of Wasatch Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Wasatch county, Utah Territory, or that belonging to that stake of Zion.

8th. To the corporation called the Church Association of the Salt Lake Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Salt Lake county, Utah Territory, provided this grant shall not be
250 construed to pass the stocks in the several incorporated companies which I, as trustee in trust, now hold in said county.

9th. To the corporation called the Church Association of Tooele Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Tooele county, Utah Territory.

10th. To the corporation called the Church Association of the Juab Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Juab county, Utah Territory.

11th. To the corporation called the Church Association of Utah Stake of Zion I hereby give all the personal property located in said stake, held by me as such trustee or owned by said church at this date, which is within the territorial limits of Utah county, Utah Territory; but this shall not be construed to pass the stocks in the incorporated companies which I, as trustee, now hold in said county.

12th. To the corporation called the Church Association of San Pete Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of San Pete county, Utah Territory.

251 13th. To the corporation called the Church Association of Uintah Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Uintah county, Utah Territory.

14th. To the corporation called the Church Association of Emery Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Emery county, Utah Territory.

15th. To the corporation called the Church Association of Sevier Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Sevier and Pi Ute counties, in Utah Territory.

16th. To the corporation called the Church Association of Millard

Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Millard county, Utah Territory.

17th. To the corporation called the Church Association of Beaver Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church as this date, located in said stake, which is within the territorial limits of Beaver county, Utah Territory.

252 18th. To the corporation called the Church Association of Panguitch Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Pi Ute and Garfield counties, Utah Territory.

19th. To the corporation called the Church Association of San Juan Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of San Juan county, Utah Territory.

20th. To the corporation called the Church Association of Parowan Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date, located in said stake, which is within the territorial limits of Iron county, Utah Territory.

21st. To the corporation called the Church Association of St. George Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date and located in said stake, which is within the limits of Washington county, Utah Territory, and Lincoln county, State of Nevada.

22nd. To the corporation called the Church Association of Kanab Stake of Zion I hereby give all the personal property, held by me as such trustee or owned by said church at this date and located in said stake, including the horses and cattle on the Pipe Spring ranch.

253 The grant and transfer of property hereby made shall not be construed to cover any property hereafter to be acquired by me, as such trustee, or to be hereafter acquired by the said church in the several stakes aforesaid:

To have and to hold unto the said several stakes of Zion the personal property above referred to and consisting of horses, cattle, sheep, swine, grain, hay, straw, flour, poultry, and other personalty of every nature and kind, save and except the cash or stocks as aforesaid, for the use and benefit of the members of the Church of Jesus Christ of Latter-Day Saints residing in the said several stakes and for the building of houses of worship and for such use as the said corporation shall from time to time devote said means to or the income thereof, with full power in said corporation to use any of said property so conveyed to them hereby for the building of houses of worship or temples and the like that may be outside of the territorial limits of the stakes thus contributing, so that such houses and temples to which assistance may be given are erected

for the worship of God, in harmony with the established views and religious tenets of the Church of Jesus Christ of Latter-Day Saints.

254 I hereby appoint James Jack as my attorney and agent to fully carry out this conveyance, and to deliver the property aforesaid to the said corporations or to their duly appointed agent or agents.

In witness whereof I have hereunto set my hand and seal this day and year first above written.

JOHN TAYLOR, [SEAL.]
Trustee in Trust.

Attest:
THOMAS F. ROUCHE.
JOSEPH BARTON.

255 EXHIBIT "B."

"General Conference of the Church of Jesus Christ of Latter-Day Saints.

"Session of Friday, April 8th, 1887.

"Conference was called to order by Elder Lorenzo Snow:

"The names of the authorities were presented by Elder F. D. Richards in the following order, and unanimously sustained:

"John Taylor, prophet, seer, and revelator to and president of the Church of Jesus Christ of Latter-Day Saints in all the world.

"George Q. Cannon as first and Joseph F. Smith as second counsellors in the first presidency."

(After naming other officers.) "Elder F. D. Richards said: It is well known that recent legislation enacted by Congress contains some provisions affecting the organization of the church, in consequence of which the following preamble and resolutions have been prepared to submit to the saints," which he proceeded to read:

"Whereas by section twenty-six of a certain act of Congress approved March 3rd, 1887, it is provided that all religious societies, sects, and congregations shall have the right to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial

256 grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation; and

"Whereas that body of religious worshippers called the Church of Jesus Christ of Latter-Day Saints has certain houses of worship, parsonages, and other real property in the Territory of Utah that has for many years past belonged to and still does belong to the members of said church generally, which said property is not the special property of any local congregation or special body of such people; and

"Whereas it is desirable that they name and have appointed by the proper probate court such suitable persons of their own selection of the authorities of said church to hold such property as is named in said act, and for which there is no trustee duly or legally appointed:

"Now, therefore, be it resolved by the Latter-Day Saints in general conference assembled, That we nominate and appoint as trustees to hold the real property of the character aforesaid belonging to the said worshippers generally in said Territory the following-named persons, to wit: Presiding Bishop William B. Preston, and his counsellors, Robert T. Burton and John R. Winder; and we request that the authorities of the Church of Jesus Christ of Latter-Day Saints make formal nomination of these parties to hold said offices of trustees, with all the powers, rights, and duties that virtually do belong or should belong to such position, reserving the power to the authorities of said church to fill all vacancies in
257 said body of trustees as shall from time to time occur."

"Motioned by Apostle John Henry Smith, seconded by President A. M. Cannon, and unanimously carried by the congregation that the preamble and resolutions be adopted."

258 EXHIBIT "C."

Petition and Nomination.

In the Probate Court for the County of Salt Lake, Territory of Utah.

In the matter of appointment of trustees to hold property for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints.

Whereas the religious society or body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints is the rightful owner of certain real estate situated in the county of Salt Lake and Territory of Utah, the title to which, under the provisions of an act of Congress entitled "An act to amend an act entitled An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22nd, eighteen hundred and eighty-two, should be held through trustees duly appointed by a court exercising probate powers in said Territory, on the nomination of the authorities of such society; and

Whereas at a general conference of said Church of Jesus Christ of Latter-Day Saints held at Provo, in the county and Territory of Utah, on the eighth day of April, A. D. 1887, the following resolution was unanimously passed and adopted by the authorities and members of said society and church present, to wit:

Whereas by section 26th of a certain act of Congress ap-
259 proved March 3rd, 1887, it is provided that all religious societies, sects, and congregations shall have the right to hold, through trustees appointed by any court exercising probate powers

in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation; and

Whereas that body of religious worshippers called the Church of Jesus Christ of Latter-Day Saints has certain houses of worship, parsonages, and other real property in the Territory of Utah that has for many years past belonged to and still does belong to the members of the said church generally, which said property is not the special proporty of any local congregation or special body of said people; and

Whereas it is desirable that they name and have appointed by the proper probate court some suitable person of their own selection of the authorities of their church to hold such property as is named in said act, and for which there is no trustee duly or legally appointed:

Now, therefore, be it resolved by the Latter-Day Saints in general conference assembled, That we nominate and appoint
260 as the trustees to hold the real property of the character aforesaid belonging to the said worshippers generally in said Territory the following-named persons, to wit: Presiding Bishop William B. Preston and his counsellors, Robert T. Burton and John R. Winder; and we request that the authorities of the Church of Jesus Christ of Latter-Day Saints make formal nomination of these parties to hold said offices of trustees, with all the powers, rights, and duties that virtually do belong or should belong to such position, reserving the power to the authorities of said church to fill all vacancies in said body of trustees as shall from time to time occur.

Now, therefore, in order to conform to the requirements of said law, and to secure the appointment of suitable trustees to hold the title to said real estate in accordance with the terms of said resolution, we, the undersigned, who constitute the first presidency and authorities of said Church of Jesus Christ of Latter-Day Saints, do hereby, in pursuance of said resolution, nominate William B. Preston, Robert T. Burton, and John R. Winder to be such trustees and we ask this honorable court to appoint them such trustees, in conformity with the law in such cases made and provided.

JOHN TAYLOR.
GEORGE Q. CANNON.
JOS. F. SMITH.

261 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, John C. Cutler, clerk of the probate court in and for the county of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true, and correct copy of the petition and nomination of trustees of the Church of Jesus Christ of Latter-Day Saints, filed May 19th, A. D. eighteen hundred and eighty-seven, as appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court this nineteenth day of October, A. D. 1887.

[SEAL.] JOHN C. CUTLER,
Probate Clerk,
By H. S. CUTLER, *Deputy*.

[Endorsed:] Sup. c't Utah. The United States *vs.* The Church of Jesus Christ, &c., *et al.* Filed October 19, 1887. E. T. Sprague, clerk. Statement of facts.

262 TERRITORY OF UTAH, } *ss:*
Salt Lake County, }

I, Ezra T. Sprague, clerk of the supreme court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true, and correct copy of a statement of facts agreed upon by counsel in the cause and for the purposes therein stated, filed Oct. 19, 1887, and remaining on file and of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 12th day of December, A. D. 1888.

[Seal Supreme Court Territory of Utah, United States of America.]

E. T. SPRAGUE, *Clerk*.

263 Supreme Court of the United States. October Term, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Appellants,
vs.
THE UNITED STATES. } No. 1423.

It is hereby agreed that the stipulation of facts on motion for the appointment of a receiver, filed in this case in the supreme court of the Territory of Utah on the 19th day of October, 1887, and which was inadvertently and through the mistake of the clerk of said court omitted from the original transcript and record on appeal herein, be, and it is hereby, included in and made a part of the record of said case.

It is hereby further stipulated that the record in said cause, which is now on file in the Supreme Court of the United States, with the addition of the stipulation above named, be, and the same shall stand as, the record on appeal in said case on the part of the interveners, George Romney, Henry Dinwoody, James Watson, and John Clark, and it shall not be necessary to bring up any additional record in the case of said appeal of said interveners except the petition for the appeal, the order allowing the same and fixing the
264 amount of bond, the appeal bonds and the citation, which it

is hereby stipulated may now be printed and attached to the record of said appeal already pending in this case.

J. E. McDONALD,
J. O. BROADHEAD,
JOHN M. BUTLER,
F. S. RICHARDS,
Solicitors for Appellants.

A. H. GARLAND,
Att'y Gen'l U. S.

265 [Endorsed:] Supreme Court U. S. 1888, October term. No. 1423. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints & *al.*, app'ts, *vs.* The United States. Stipulation of counsel and addition to record. Filed Dec. 21, 1888.

Endorsed on cover: Utah Territory supreme court. No. 1423. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.*, appellants, *vs.* The United States. Filed October 26, 1888. And No. 1457. George Romney, Henry Dunwoody, James Watson, and John Clark, appellants, *vs.* The United States. Filed December 21, 1888.

(14)

157

Dec 3/88. Motion to advance
Dec 8. Motion granted for advance in [illegible]

Supreme Court of the United States.

136

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS ET AL., *Appellants*,

v.

THE UNITED STATES, *Appellees*.

No. 1423.

MOTION TO ADVANCE CAUSE.

JAMES O. BROADHEAD,
JOSEPH E. McDONALD,
JOHN M. BUTLER,
FRANKLIN S. RICHARDS,
for Appellants.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1888.

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL., APPELLANTS,
v.
THE UNITED STATES, APPELLEES.

No. 1,423.

Appeal from Supreme Court of the Territory of Utah.

Motion to Advance Cause.

STATEMENT OF CASE.

Come now the appellants, by their solicitors, and show to the Court that on July 30, 1887, the United States brought a suit in equity in the Supreme Court of the Territory of Utah, praying for the dissolution and annulment of the charter of the corporation of the Church of Jesus Christ of Latter-day Saints; for the appointment of a receiver to take possession of the real and personal property then owned, held and possessed by the said corporation of the Church of Jesus Christ of Latter-day Saints; and claiming forfeiture to the United States of certain of said real and

personal property so held by said corporation; that by said bill of complaint the United States admit:

First. The due and lawful incorporation of the Church of Jesus Christ of Latter-Day Saints under and by virtue of the laws of the Territory of Utah.

Second. That by the act of incorporation the said Church of Jesus Christ of Latter-Day Saints was authorized to hold and possess real and personal property, and, by one trustee in trust and twelve assistant trustees, to receive, hold, buy, sell, manage and control the real and personal property of said corporation.

Third. That under and by virtue of said act of incorporation the said corporation of the Church of Jesus Christ of Latter-Day Saints, as such corporation, did buy, receive, acquire and hold large amounts of real and personal property of great value in the Territory of Utah.

Fourth. That the corporation of the Church of Jesus Christ of Latter-Day Saints, from the time of its organization until the 19th day of February, 1887, was a corporation or association for religious or charitable purposes.

That the said suit so brought by the United States is based upon the third section of the act of Congress of July 1, 1862, entitled, "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," and the thirteenth and seventeenth sections of an act of Congress of March 3, 1887, entitled, "An act to amend section 5352 of the Revised Statutes of the United States in reference to polygamy, and for other purposes, approved March 22, 1882," which said sections of law are in the words and figures following, to wit:

Act of July 1, 1862.

SEC. 3. *And be it further enacted*, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government, of a greater value than $50,000; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: *Provided*, That existing vested rights in real estate shall not be impaired by the provisions of this section.

Act of March 3, 1887.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislatlve Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground, shall be forfeited.

SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so-

called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved. That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section, and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act, and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purpose of this section said court shall have all the powers of a court of equity.

Section 26 of the aforesaid act of Congress of March 3, 1887, is as follows:

SEC. 26. That all religious societies, sects and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds, as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

CLAIM OF UNITED STATES.

That by its said bill of complaint the United States claim:

1. That by virtue of the provisions of the third section of the act of Congress of July 1, 1862, any corporation or association, for religious or charitable purposes, was forbidden to acquire or hold real estate in any Territory, during the existence of the territorial government, of greater value than fifty thousand dollars, although such corporation or association, for religious or charitable purposes, might have been duly and legally incorporated long prior to said first day of July, 1862.

2. That the Church of Jesus Christ of Latter-Day Saints did buy, receive, acquire and hold real estate in excess of fifty thousand dollars in value, contrary to the provisions of said third section of said act of Congress of July 1, 1862.

3. That by virtue of the premises the real estate so acquired by said Church of Jesus Christ of Latter-Day Saints, subsequent to the enactment of said act of Congress of July 1, 1862, which was owned and held by the said corporation of the Church of Jesus Christ of Latter-Day Saints on or before the 19th day of February, 1887, was and is subject to escheat to the United States.

4. That by the act of March 3, 1887, the charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints was on the 19th day of February, 1887, disapproved, repealed and annulled by the Congress of the United States, and that the said corporation was thereby dissolved, and that all the real estate owned and occupied by it in excess of fifty thousand dollars, which was not, on the 19th day of February, 1887, held and occupied as a building, or ground appurtenant thereto, for the purpose of the worship of God, or parsonage connected therewith, or burial ground, was subject to escheat to the United States.

5. That the Church of Jesus Christ of Latter-Day Saints was unlawfully possessing and using the real estate so

claimed to be subject to escheat to the United States by said act of Congress, and that from and after the 19th day of February, 1887, there had been and was no person lawfully authorized to take charge of, manage, preserve or control the property, real and personal, which on or before said last-named date was held, owned, possessed and used by the said corporation of the Church of Jesus Christ of Latter-Day Saints, and by reason thereof that all of the said property, real and personal, was subject to irreparable and irremedial loss and destruction, and that therefore the United States was entitled to the appointment of a receiver to take possession, control and management of all of said real and personal property, as herein above stated.

Claim of Appellants.

The appellant, the corporation of the Church of Jesus Christ of Latter-Day Saints, claims and insists:

First. That the act of Congress of July 1, 1862, is unconstitutional and void in so far as it attempts to limit or withdraw the powers, franchises and grants given to and accepted by corporations created under the sanction of the statutes of the Territory of Utah and the laws of the United States prior to the enactment of said act of Congress of July 1, 1862, because the act of incorporation, when accepted and acted upon, became a contract between the United States and the said corporation, appellant herein.

Second. That even if the act of Congress of July 1, 1862, should be by this court held constitutional and valid, still it could have no force or effect upon, over or regarding real estate acquired, possessed, and held either directly by, or in trust for, said corporation, appellant herein, prior to the enactment of said act of Congress of July 1, 1862, regardless of the present value of said real estate so ac-

quired, possessed, and held by said corporation prior to July 1, 1862.

Third. That the act of Congress of March 3, 1887, is unconstitutional and void in so far as it attempts or purports to annul and dissolve the corporation of the Church of Jesus Christ of Latter-Day Saints, and withdraw the powers, franchises and grants held and enjoyed by the said corporation at the time of the enactment of said act of March 3, 1887, because said act attempts and purports to impair, annul and supersede the obligations of a contract entered into by and between the United States and said corporation, appellant herein, which contract was approved, sanctioned and acted under by the said parties hereto for over thirty-five years prior to the passage of said act of March 3, 1887.

Fourth. That said act of Congress of March 3, 1887, is unconstitutional and void in so far as it attempts or purports to confer upon the United States, or the officers or agents thereof, power or authority to seize, possess, hold, forfeit and escheat to the United States any real estate possessed, acquired or held by said corporation of the Church of Jesus Christ of Latter-Day Saints, either directly or by a trustee or trustees in trust for said corporation, at the time of the passage of said act of Congress of March 3, 1887, because if it shall finally be held that said corporation was dissolved by said act, and that said act is valid in so far as it seeks and purports to dissolve said corporation, still, upon such dissolution, the real estate and property belonging to said corporation at the date of such dissolution became, and is in law and equity, the property of the individual members of said corporation, and should have been so adjudged upon the petition of intervention of George Romney, Henry Dinwoodey, James Watson and John Clark filed in this cause, while pending in

the Supreme Court of the Territory of Utah, as shown by the record of this appeal; and because the attempted seizure, confiscation and forfeiture of said real estate so held, acquired and possessed by said corporation is an inequitable and unjust attempt to impair, annul and destroy the obligations of a solemn contract entered into by and between the United States and said corporation, appellant herein, after the same had been sanctioned, approved, ratified and acted under for more than thirty-five years.

Fifth. That there is no law, or semblance of law, in any act passed by the Congress of the United States authorizing, or attempting or purporting to authorize or empower, the United States, or its officers or agents, to seize, confiscate, forfeit and escheat to the United States the personal property possessed, acquired and held, either directly by said corporation of the Church of Jesus Christ of Latter-day Saints, or by a trustee or trustees-in-trust for said corporation, and that the seizure and present holding by the United States, by its receiver, of the personal property belonging to said corporation, appellant herein—amounting in value to about the sum of $450,000, much of which is perishable property and expensive to keep and maintain—is oppressive, unjust, inequitable and without the authority or sanction of law.

Appellants further show this Court that upon the claims herein above stated, as preferred and urged by the United States, and over the protest and objection of appellants, as presented by their demurrers and answers and petition of intervention, herein above mentioned, to the complaint filed by the said United States, the Supreme Court of Utah has entered a final decree, by which is decreed:

1. The dissolution of the corporation of the Church of Jesus Christ of Latter-Day Saints.

2. Authorizing the receiver theretofore appointed by the

court in said cause to seize, possess and hold all of the property, real and personal, belonging to said corporation of the Church of Jesus Christ of Latter-Day Saints—excepting only one piece of real estate known as "The Temple Block," in Salt Lake City, which by said decree is to be held by trustees for the use of said sect and body of worshippers in the lawful exercise of worship according to the tenets of said sect.

3. That all of the personal property—amounting in value to about $450,000.00—has become forfeited and escheated to tbe United States.

4. Continuing the possession of the receiver of all of the real estate belonging to said corporation of the Church of Jesus Christ of Latter-Day Saints—excepting "The Temple Block"—pending the several proceedings instituted by information by the United States in the Third District Court of said Territory of Utah, for the purpose of having said real estate declared and decreed forfeited and escheated to the United States, from which decree these appellants have prayed and perfected their appeal to this court, and have caused the record upon said appeal to be printed; to which record reference is hereby made.

REASONS FOR ADVANCEMENT OF CAUSE.

And appellants here now move the Court to advance this cause upon the docket of this Court, and assign the same for final hearing at an early day to be fixed by order of this Court, and in support of their said motion said appellants assign the following reasons, to wit:

First. It is a cause in which the United States are concerned as a party.

Second. It is a cause which involves matters of public interest, very nearly and seriously affecting a very large

portion of the citizens, residents and property-owners of the Territory of Utah.

Third. It is a cause involving the constitutionality of certain Acts of the Congress of the United States.

Fourth. Under the decree appealed from, a very large amount of property belonging to the Church of Jesus Christ of Latter-Day Saints has been seized and is now held by a receiver. Much of said property being of a perishable nature, great and irreparable loss and damage will ensue if the property so seized and held is left in the hands of the receiver for the three years or more before this case could be reached in regular order. If said receivership is so long continued, the costs and expenses thereof, and the loss sustained by reason thereof, will amount to a virtual confiscation of very large amounts of property, and will be in effect a denial of justice; the compensation, fees, and expenses now claimed by the receiver appointed by the court, and his counsel, up to this time, amounting to about the sum of $50,000.

Fifth. Said cause involves a question of general public interest to the inhabitants of all the Territories, because it involves the question of the power of Congress to control and restrict the rights of all church corporations, of all kinds and denominations, in the matter of acquiring and holding real and personal property, and the power and right of Congress to dissolve church corporations and declare the property of such corporations forfeited and escheated to the United States.

Sixth. Under said decree appealed from, the United States has seized and now holds by its receiver possession of several hundreds of thousands of dollars worth of personal property belonging to the Church of Jesus Christ of Latter-Day Saints, and claims that the same has become forfeited and escheated to the United States, without the

shadow or semblance of any law or laws granting any such right or power.

Seventh. Under said decree appealed from, the United States have seized, and now hold by a receiver, possession of real estate belonging to the Church of Jesus Christ of Latter-day Saints of the value of several hundreds of thousands of dollars, and claim the right to forfeit and escheat said real estate to the United States, notwithstanding the fact admitted of record, that said real estate has been possessed, held and used by or in trust for said Church of Jesus Christ of Latter-Day Saints ever since the year 1848, under the full power and sanction of the statutes of the Territory of Utah and the laws of the Congress of the United States, and notwithstanding the further fact that a portion of said real estate so sought to be escheated to the United States has been for more than ten years last past, and was at the time of the passage of said act of Congress of March 3, 1887, held and occupied exclusively for the purposes of a parsonage for said Church.

Eighth. There are now pending in the Supreme and District Courts of the Territory of Utah seven other suits which involve the same questions that arise in this case, and the final determination of them will depend upon the decision of this Court as to the constitutionality of the aforesaid acts of Congress, and the other points involved herein.

For the foregoing and other good and sufficient reasons appearing of record in this cause, the appellants pray this Honorable Court to advance the case on the docket and assign it for final hearing at an early day.

JAMES O. BROADHEAD,
JOSEPH E. McDONALD,
JOHN M. BUTLER,
FRANKLIN S. RICHARDS,
Solicitors for Appellants.

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SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, ET AL., *Appellants*,

vs.

THE UNITED STATES.

No. 1423.

Brief of Joseph E. McDonald and John M. Butler in Behalf of Appellants.

BY JOHN M. BUTLER.

FRANK H. SMITH, INDIANAPOLIS.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, ET AL., *Appellants*, *vs.* THE UNITED STATES. — No. 1423.

BRIEF IN BEHALF OF APPELLANTS.

STATEMENT OF CASE.

This is an appeal from a decree in Chancery rendered by the Supreme Court of the Territory of Utah in favor of the United States against the corporation of the Church of Jesus Christ of Latter-Day Saints, and the Trustees of said corporation.

ADMISSIONS MADE BY THE BILL OF COMPLAINT.

The bill of complaint brought by the United States admits:

First. That on February 8, 1851, the General As-

sembly of the Provisional Government of the so-called State of Deseret, which was afterwards organized as the Territory of Utah, passed an ordinance incorporating as a corporation the Church of Jesus Christ of Latter-Day Saints, which ordinance of incorporation was afterwards, on January 19, 1855, re-enacted by the Legislature and approved by the Governor of the Territory of Utah. (Record, pp. 1, 4, 5, 6.)

Second. That under and by virtue of said act of incorporation the Church of Jesus Christ of Latter-Day Saints was created a corporation, and became and was duly and lawfully incorporated, and was endowed with the powers and franchises granted by said act of incorporation. (Record, p. 2.)

Third. That said corporation, appellant herein, was legally authorized and empowered by said act of incorporation to acquire, occupy, hold and possess real and personal property without limitation as to amount or value. (Record, p. 2.)

Fourth. That under and by virtue of said act of incorporation said appellant corporation did buy, receive, acquire and hold large amounts of real and personal property of great value in the Territory of Utah. (Record, p. 2.)

Fifth. That the corporation of the Church of Jesus Christ of Latter-Day Saints, from its organization until the 19th day of February, 1887, was a corporation or association for religious or charitable purposes.

CLAIMS AND CHARGES PREFERRED BY THE BILL OF COMPLAINT.

The United States, by the bill of complaint, asserts the following claims and charges:

First. By the sixth, fourth and seventh paragraphs of the bill the United States claims that all REAL ESTATE purchased, received or acquired by the appellant corporation subsequent to the enactment of the third section of the act of Congress of July 1, 1862, over, and in excess of, fifty thousand dollars in value thereof, *was and is subject to escheat to the United States*—excepting only such real estate acquired by the appellant corporation after July 1, 1862, as was, on February 19, 1887, held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground.

(Record, p. 2.)

Note. It will be observed that the United States does not in these paragraphs of the bill assert or claim any right to escheat or forfeit any real estate acquired, possessed and held by the appellant corporation *before the enactment of the third section of the act of Congress of July 1, 1862.* On the contrary, the bill by these paragraphs virtually admits that all real estate acquired by the appellant corporation prior to July 1, 1862, regardless of the value thereof, is not subject to escheat to the United States.

Second. By the eighth paragraph of the bill the United States avers and claims:

"That on the 19th day of February, 1887, the charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints was disapproved, repealed, and annulled by the Congress of the United States, and the said corporation was thereby dissolved, and *all* the REAL ESTATE owned and occupied by it IN EXCESS OF FIFTY THOUSAND DOLLARS, *which was*

not on the 19th day of February, 1887, held and occupied as a building or ground appurtenant thereto for the purpose of the worship of God or parsonage connected therewith or burial ground, was subjected to escheat to the United States." (Record, pp. 2, 3.)

Note. It will be observed that this claim excepts and exempts two classes of real estate from becoming subject to escheat to the United States under the act of Congress of March 3, 1887, viz:

1. Real estate to the amount of fifty thousand dollars in value.

2. Real estate held and occupied for the purpose of the worship of God, or for a parsonage, or for burial ground.

The United States virtually admits by the language of the bill above quoted that these two classes of real estate are not subject to escheat to the United States.

Third. By the bill it is further claimed by the United States: That appellants wrongfully and in violation of law, still claim to hold and exercise the powers heretofore held and exercised by said corporation, appellant herein, and are unlawfully possessing and using the *real estate* acquired subsequent to the first day of July, 1862, and the rents, issues and profits thereof: And that since February 19, 1887, there has been and is no person lawfully authorized to take charge of, manage, preserve or control the property, real and personal, which, on or before February 19, 1887, was held, owned, possessed and used by the said corporation, appellant herein, and that by reason thereof all of said property, real and personal, is subject to irreparable and irremediable loss and destruction. (Record, p. 3, Pars. 9, 10.)

Note. The contradictory averments of the bill are made very apparent by these last averments. The ninth paragraph of the bill only claims that the appellant corporation is unlawfully possessing and using the real estate "referred to in the fourth paragraph of this bill." The fourth paragraph of the bill, as has already been shown, only refers to real estate purchased, received, acquired and held "*after the 1st day of July, 1862.*"

By the sixth and eighth paragraphs of the bill it is admitted by the United States that three classes of real estate owned and possessed by the corporation, appellant herein, were lawfully and rightfully owned and held by it on February 19, 1887, and were not made subject to escheat to the United States, either by the act of Congress of July 1, 1862, or by the act of Congress of March 3, 1887, viz:

1. All real estate acquired by the corporation, appellant herein, prior to July 1, 1862.

2. Real estate to the amount of fifty thousand dollars in value acquired subsequent to the enactment of the act of July 1, 1862.

3. All real estate held and occupied for the purpose of the worship of God, for parsonage and for burial ground. Yet, in the tenth paragraph of the bill, it is claimed that all of the real and personal property of the appellant corporation is without lawful owner or possessor, and should, therefore, be seized by the United States and placed in charge of a Receiver.

PRAYER OF BILL.

First. That a receiver may be appointed, and that said corporation, appellant herein, and its officers and

agents, may be ordered and required to surrender and deliver up to such Receiver all of the assets, property and effects, and the possession of the real estate belonging to said corporation, and also all moneys, notes, drafts, bills of exchange, checks or other evidences of indebtedness due and owing to said corporation, as well as all books of account, accounts, deeds, bonds, mortgages, certificates of stock and papers of every nature belonging to said corporation; and that said Receiver may continue in the possession and management thereof until the sale or other disposition can be made thereof according to law under and by virtue of the order of the Court.

Second. That a decree be made declaring the dissolution and annulment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints.

Third. That a Commissioner be appointed to select and set apart out of the real estate held and occupied by said corporation such real estate as may be lawfully held for religious uses out of the real estate heretofore held by said corporation.

Fourth. That such orders may be made from time to time as may be just and equitable to wind up the affairs of said corporation conformably to law and equity.

Fifth. For such other and further relief in the premises as the nature of the case may require, and as may seem just and meet and according to equity and good conscience. (Record, pp. 3, 4.)

The foregoing analysis of the bill of complaint clearly shows that the broadest possible construction of the averments of the bill utterly fails to support or war-

rant the order appointing a Receiver and the final decree rendered by the Supreme Court of the Territory of Utah upon that bill.

The bill admits the lawful creation of the corporation, appellant herein: Its continuance as such lawful corporation for over thirty-six years: That during all those thirty-six years it was and continued to be a corporation "*for religious or charitable purposes*:" That under its charter and the lawful exercise of its franchise rights, it acquired vested rights in real estate and accumulated personal and real estate of great value, and that from the date of its creation up to February 19, 1887, it rightfully and lawfully possessed, held and used the real and personal property acquired and owned by it.

The bill contains no charge or averment that the corporation, appellant herein, ever used, applied or appropriated any of its personal or real property, or any of the proceeds, rents, issues or profits thereof to any other than "religious or charitable purposes."

It contains no charge or averment of any wrongful, or *ultra vires*, act of the appellant corporation or its Trustees, excepting only that it acquired real estate exceeding the amount of fifty thousand dollars in value after the enactment of the act of Congress of July 1, 1862.

It asserts no claim whatever in behalf of the United States upon the personal property belonging to the appellant corporation.

It contains no charge or averment that the charter of the corporation, appellant herein, or any act of Congress limited or attempted to limit the amount or value of the personal property that might be acquired and held by said corporation.

It asserts no claim that either the act of Congress of July 1, 1862, or the act of Congress of March 3, 1887, or any other law, gives to the United States the right or power to seize, confiscate, forfeit or escheat the personal property of the corporation, appellant herein.

The prayer of the bill does not ask that any personal property may be decreed subject to escheat or forfeiture.

The entire bill is based solely upon the claim that the act of Congress of March 3, 1887, not only dissolved the corporation, appellant herein, without giving it a day in Court, but also pronounced final judgment of escheat and forfeiture of all the property of the corporation, both real and personal, and that all that is left for the Courts to do is to seize the property, set apart a little of the real estate for Church uses, and turn over all of the personal and the remainder of the real estate to the United States as escheated property.

To this bill appellants filed demurrer.

(Record, pp. 7, 8.)

Pending the demurrer the United States pressed its motion for appointment of a Receiver. The Court sustained the motion, and entered an order appointing a Receiver, and requiring the appellant corporation, and its Trustees, officers and agents, to surrender and deliver to such Receiver all of its property, real, personal, and mixed, of every nature, kind and description whatsoever.

(Record, pp. 9, 10.)

The opinion of the Court in deciding the motion for the appointment of a Receiver appears in the record.

(Record, pp. 13–26.)

A single sentence of the opinion shows that the Court below held that the act of Congress of March 3,

1887, not only repealed the charter of the appellant corporation, but also judicially pronounced judgment of dissolution of the corporation, leaving nothing for the Court to do, but simply to seize and distribute the estate of the dead corporation as directed by said act of Congress.

"The power of Congress to dissolve the corporation styled the Church of Jesus Christ of Latter Day Saints necessarily follows the right to annul its charter, which we have held could be done." (Record p. 21.)

William B. Preston, Robert T. Burton and John R. Winder were made defendants and filed their demurrer to the bill. Whereupon the Court overruled both demurrers filed by defendants below and appellants in this Court. (Record, pp. 10, 11, 12.)

The appellants filed answers to the bill averring:

1. The due and lawful creation of the corporation of the Church of Jesus Christ of Latter-Day Saints, and setting out the ordinance of incorporation.

2. That said corporation never acquired or owned any real or personal property in its corporate name, but that it did, under the powers expressly granted by its charter, acquire and hold both real and personal property in the name of a Trustee in trust for said corporation.

3. That it was at the time of its creation, ever since has been, and still is, a corporation or association for religious or charitable purposes.

4. That the act of Congress of July 1, 1862, and the act of Congress of March 3, 1887, in so far as they attempt or pretend to dissolve the said corporation, or interfere with, or limit its right to hold property, or to

escheat or forfeit its property, or wind up its affairs, were and are unconstitutional, invalid and void.

5. That the charter of said corporation constitutes a contract between the Territory of Utah and the United States, on the one part, and the incorporators and members of the said corporation, on the other part, which contract, by the acceptance of said charter by the incorporators, became and is an executed contract. That said corporation, relying upon its charter as a contract, has in good faith acquired, and owns valuable real and personal property, and that the United States has not now, and never has had, the power or right to repeal or annul the said charter of said corporation, or to dissolve the said corporation.

6. Setting out by description the three several tracts of real estate owned by said corporation and held in trust for it on the 3d day of March, 1887.

7. That it held and owned, possessed and occupied two of said pieces of real estate long prior to the enactment of the act of Congress of July 1, 1862, and that the third tract of real estate was continuously from the time it was acquired—nine years before the institution of this suit—used aud occupied solely and only as parsonage property, and that the same was and is necessary for the convenience and use of the congregation, church, or religious society using the same as its parsonage.

8. That in obedience to the requirements of the 26th section of the act of Congress of March 3, 1887, said corporation applied to the Probate Court of Salt Lake County, in the Territory of Utah, for the appointment of three Trustees to take the title to and have and hold the said three tracts of real estate then owned by and held in trust for said corporation.

That on the 19th day of May, 1887, said Court did appoint William B. Preston, Robert T. Burton and John R. Winder as Trustees to take title to and hold said three tracts of real estate. That the said three tracts of real estate—excepting part of one tract omitted by mistake of the draughtsman of said deeds—were conveyed by the Trustees in trust for said corporation to the said three Trustees appointed by the Probate Court and making the deeds exhibits with the answer.

9. Denying that the charter of said corporation was repealed and annulled on February 19, 1887, as averred in the bill, and averring that even if the said act of Congress was and is valid, nevertheless the same did not go into force and take effect until the third day of March, 1887; and further averring:

That said corporation, as it lawfully might, acquired and held, from time to time, certain personal property, goods and chattels, all of which it had acquired, held and used solely and only for charitable and religious uses and purposes:

That on February 28, 1887, it still owned and held certain of such personal property, goods and chattels, donated to it by the members of said Church and friends thereof solely and only for the use and distribution for charitable and religious purposes:

That all of such personal property was, from the creation of said corporation, at all times held, not in the corporate name of said corporation, but in the name of a Trustee in trust:

That on February 28, 1887, John Taylor, who then held all the personal property, moneys, stocks and bonds belonging to said corporation, as the Trustee in trust for said corporation, did, by a certain instrument in

writing set forth as "Exhibit H" with said answer—by and with the consent and approval of said corporation—convey all of said personal property, moneys, stocks and bonds so held by him as Trustee in trust for said corporation—after reserving sufficient of said moneys and stocks to pay the then existing debts of said corporation—to certain ecclesiastical corporations created and existing under and by virtue of the laws of the Territory of Utah, to be by said ecclesiastical corporations devoted solely and only to charitable and religious uses and purposes. And that pursuant to said written instrument of conveyance, the said Taylor, as Trustee in trust for said corporation, did, prior to March 3, 1887, deliver said personal property, goods and chattels to said several church corporations, as mentioned and scheduled in "Exhibit H," filed with and made part of said answer.

The answers of the other defendants, in so far as applicable, adopt the joint and several answer of the appellant corporation and its Trustees.

(Record, pp. 27–55.)

By an agreed statement of facts filed by the parties in the Court below for the purpose of avoiding the long delay that would be occasioned by the taking of evidence, the appellants agreed that said personal property was not actually delivered to said ecclesiastical corporations named in "Exhibit H," but that the same was in the possession of William B. Preston, as Trustee in trust, at the time of the commencement of this suit.

Angus Cannon, Theodore McKean, Francis Armstrong and Jesse W. Fox, Jr., were made defendants in the Court below and filed their answers. The United States filed general replications to the several answers filed to the bill. (Record, pp. 55–63.)

Preston, Burton and Winder, the Trustees appointed by the Probate Court of Salt Lake County, Territory of Utah, pursuant to the 26th section of the act of Congress of March 3, 1887, filed their petition asking the Court that the premises therein described be set apart as a parsonage, averring that they already held legal title to part of said tract, and that Theodore McKean held legal title to a small part of said tract—this is the tract omitted by mistake as set out in the fourth paragraph of the answer of the appellant corporation [see Record, p. 30]—and averring that said premises were held in trust by said Preston, Burton and Winder for the use and benefit of the President of that body of religious worshipers known and called the Church of Jesus Christ of Latter Day Saints as a parsonage, and that the President of said Church has made his home and residence thereon ever since the year 1878. (Record, pp. 63, 64.)

The United States filed answer to this petition, averring that the deed under which Preston, Burton and Winder claimed title to said real estate was and is wholly void for want of power in the persons named therein as grantors to make the same, and denying that said property is, or ever has been, a parsonage. (Record, p. 65.)

Preston, Burton and Winder, Trustees appointed by the Probate Court of Salt Lake County, pursuant to the 26th section of the act of Congress of March 3, 1887, filled two other petitions:

The one to set apart to said Trustees for the Church of Jesus Christ of Latter-Day Saints a certain tract of real estate in Salt Lake City, known as the "Tithing Office property," averring that said real estate was taken possession of by said Church in the year 1848 when Salt Lake City was first laid out and surveyed, and ever

since has been, and still is, used and occupied by said Church: That prior to July 1, 1862, buildings and improvements of the value of several thousand dollars had been built thereon by said Church, and that it had acquired a vested right to and interest in said property before July 1, 1862, and was entitled to own and possess the same.

The other petition asked to set apart to said Trustees block 87 in Salt Lake City, known as "Temple Block," averring that said real estate has been in the possession of said Church and used by it ever since the year 1848: That there are on said block three large buildings, two completed and the third in course of construction, but nearing completion: That said buildings have been, and are being, constructed by said Church exclusively for religious purposes, and that the same have been and are used exclusively for the worship of God, and that the whole of said block is appurtenant to said building.

In both petitions said Trustees aver that they now hold the legal title to said two tracts of real estate. The deeds to them conveying these two tracts are set forth in the answer of the corporation, appellant herein, as Exhibts "E" and "F." (Record, pp. 67, 69.)

The United States answered these petitions, averring that the deeds to said Preston, Burton and Winder were, and are, void for want of power in the grantors to make the same, and denying that the said Church had a vested right to, or interest in, the "Tithing Office property" prior to July 1, 1862. (Record pp. 68, 70.)

On October 8, 1888, George Romney, Henry Dinwoody, James Watson and John Clark, by leave of Court, filed a petition in behalf of themselves and all of

the members of the Church of Jesus Christ of Latter-Day Saints. In the petition they aver that the members of said Church number more than one hundred thousand: That they cannot all, without oppressive delay, be brought before the Court: That all of said members have an interest in common with petitioners in the subject of said petition and in the questions involved in the suit.

The petition then recites the appointment of the Receiver and describes and schedules all of the real estate and personal property seized, taken possession of, and now held by said Receiver. The petition then avers:

That petitioners and others, for whose benefit the petition is filed, are members of said Church, residing in the Territory of Utah: That said Church is, and for many years past has been, a voluntary religious society or association, organized and existing in said Territory, for religious and charitable purposes: That said Church became possessed of all of said real and personal property in said petition described and mentioned, by the voluntary contributions, donations and dedications of its members, to be held, managed and applied to the use of said Church for the maintenance of its religion and charities by Trustees appointed by said members semi-annually at the General Conference of said members: That John Taylor, the late Trustee so appointed, died on July 25, 1887, and since his death no Trustee has been appointed: That said property is being wrongfully withheld and diverted by said Receiver from the purposes for which it was donated, dedicated and granted: That said petitioners and the said members of said Church on whose behalf said petition is filed, are equi-

tably the owners of said property and beneficially interested therein, and are interested to prevent the diversion thereof from said religious and charitable purposes. The prayer of the petition is that, if upon final hearing the church corporation be held and decreed dissolved, then and in that case a decree may be rendered decreeing:

1. That the said property belongs to the individual members of said Church, and that they are authorized to appoint a Trustee or Trustees to hold, manage and apply such property and money to the purposes for which it was originally given.

2. That the Receiver appointed by the Court deliver the possession of said property and its proceeds and income to such Trustee or Trustees as may be named or appointed at a General Conference of the members of said Church.

3. For such other and further relief as may be just and equitable. (Record, pp. 71–76.)

The United States filed answer to this petition in which it is averred:

1. It is denied that petitioners and members of the Church—whether a voluntary religious sect or a corporation—have any interest whatever in the property named in the petition.

2. It admits the appointment of the Receiver and that said Receiver now holds the property, real and personal, set out in said petition, but denies that the property when seized was the property of the Church of Jesus Christ of Latter-Day Saints, whether said Church be regarded as a corporation, or only as a voluntary religious sect.

3. It admits that all of said property belonged to

the corporation of the Church of Jesus Christ of Latter-day Saints PRIOR TO THE DISSOLUTION OF SAID CORPORATION.

4. It avers that "up to the 19th day of February, 1887, said Church of Jesus Christ of Latter-Day Saints existed as a corporation for religious purposes:" That on said 19th day of February, 1887, "said corporation became dissolved:" And that "since said dissolution there has been no legal owner of said property or successor in trust to said corporation, except the United States of America."

5. It denies that said Church corporation acquired said property by voluntary contributions, donations and dedications of its members, but claims that all of the real estate and a large part of the personal property was acquired by purchase.

6. It denies that petitioners or any other persons are equitably or otherwise the owners of said property or any portion thereof, or beneficially interested therein.

7. It avers the creation of the Church corporation and its continuance as a corporation up to February 19, 1887; recites the passage of the acts of Congress of July 1, 1862, and March 3, 1887, and avers that by said last named act "the said corporation of the Church of Jesus Christ of Latter-Day Saints became and was a defunct and dissolved corporation."

8. It avers that proceedings are pending by way of information against all of the real property named in the petition for the purpose of having the same declared forfeited and escheated to the United States; and that "*by operation of law the said personalty and all thereof has become escheated to the United States of America.*"

9. It avers that "since the dissolution of said corporation" there has existed a voluntary unincorporated

religious sect known as the Church of Jesus Christ of Latter-Day Saints which comprises the great body of individuals formerly constituting the membership of said corporation:" That said Church corporation "was in its nature and by its statute of incorporation, a religious corporation for the purpose of promulgating, spreading and upholding the principles and practices, teachings and tenets of said church:" And that the voluntary religious sect now composed of the former members of said corporation hold principles, doctrines, teachings and tenets "substantially the same as those of said corporation," and that if the property mentioned in said petition were delivered to the Church composed of the individuals formerly comprising the members of said Church corporation, the same would be devoted to illegal and immoral uses.

(Record, pp. 76–81.)

Note. The Court cannot fail to observe that by this answer, even more clearly than by the bill, the United States bottoms its entire case upon the theory and assumption that Congress, by the act of March 3, 1887, legislatively repealed the charter of the corporation, appellant herein, and judicially pronounced judgement of dissolution of the corporation, and that all the property, real and personal, of the dissolved corporation had become and was forfeited and escheated to the United States without the aid of any Court.

Under the averments of this answer all that the Court had to do or could do was to seize the property as the agent of the United States and distribute it under the dictation of Congress.

If this is law the announcement thereof will astonish the world.

FINDINGS OF FACT BY THE COURT.

By the decisions of this Court rendered in *Stringfellow* v. *Cain*, 99 U. S., 610; *Hecht* v. *Boughton*, 105 U. S., 236, and *Ellers* v. *Boatman*, 111 U. S., 357, the findings of fact made by the Supreme Court of the Territory of Utah are conclusive on this Court.

In the case at bar the material facts found were in substance as follows:

1. That the corporation, appellant herein, was, from the 19th day of January, 1855—by mistake printed February, 1865, in record—to the 3d day of March, 1887, a corporation for religious and charitable purposes, duly organized and existing under and in pursuance of an ordinance enacted by the Legislature of the Territory of Utah and approved by the Governor thereof on the said 19th day of January, 1855.

(Record, p. 82—1st Finding.)

Note. That part of the finding which purports to find *the date of dissolution of said corporation* is a mere conclusion of law, or opinion of the Court upon a disputed question of law, and is not conclusive on this Court as a fact found.

2. That on the 19th day of February, A. D. 1887, the Congress of the United States passed an act entitled, "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22, 1882, which purported to disapprove, repeal and annul the said charter and act of incorporation of the said corporation, appellant herein. (Record, p. 82—2d Finding.)

3. "That immediately before the passage of said act of Congress of February 19th, 1887, the said John Taylor was, and for a long time prior thereto had been,

the qualified and acting Trustee in trust of said corporation of the Church of Jesus Christ of Latter-Day Saints; that after the passage of said act of Congress of February 19th, 1887, the said John Taylor claimed to hold, and continued to exercise, the powers conferred upon said Church of Jesus Christ of Latter-Day Saints by said act of incorporation until his death, which occurred on the 25th day of July, A. D. 1887."

(Record, p. 82—3d Finding.)

4. "That at the date of the passage of said act of Congress of February 19th, A. D. 1887, and for a long time prior thereto, there were no assistant trustees of said corporation, none having been elected, appointed or qualified since the year 1877 [by mistake printed 1887 in record]; that said Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor were, at the commencement of this suit, counselors and advisers of the said John Taylor, and continued to his death counseling and advising him respecting the management, use and control of the property hereinafter described." (Record, p. 82—4th Finding.)

5. "That since the passage of said act of Congress of February 19th, 1887, the Church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the Acting President, and it has had duly designated and appointed by the Probate Court of Salt Lake County, in said Territory, in pursuance of the act of Congress aforesaid, the following named Trustees, William B. Preston, Robert T. Burton and John R. Winder to take the title to and hold such real estate as shall be allowed said re-

ligious sect by law for the erection and use of houses of worship, parsonages and burial grounds."

(Record, p. 82—5th Finding,)

6. "That at the time of the passage of said act of Congress of February 19th, 1887, there were no outstanding debts of, or claims against, said corporation, so far as appears to the Court from the evidence herein."

(Record, p. 83—6th Finding.)

Note. The Court will observe that in the first finding the Court below gives the date, March 3, 1887, as the time when the act of Congress, upon which this litigation is based, went into force and took effect, if valid. In all the other findings the Court names this same act as the "act of Congress of February 19th, A. D. 1887." The solicitors for the United States use this same description of this act, which became a law, if valid, on March 3, 1887, and not before. The reason for this singular action of the Court and the solicitors for the United States may appear in the further discussion of this case.

7. That at the time of the passage of the act of Congress of February 19, 1887, the said corporation owned, held and possessed seven parcels, tracts or lots of real estate, which are described by metes and bounds, and properly described in seven items or paragraphs of the findings of fact appearing on pages 83, 84 and 85 of the record.

That of said real estate the following described tract, viz: "All of block eighty-seven (87) in Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory, known as the Temple Block, of the value of $500,000, * * * was taken possession of by the agents of the said Church of Jesus Christ of Latter-

Day Saints, then existing as a voluntary unincorporated religious sect, when Salt Lake City was first laid out and surveyed, in 1848, and since said date has been in possession of said church as a voluntary religious sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of as aforesaid, it was a part of the public domain, and continued to be such until said land was entered by the Mayor of said City, along with other lands, on the 21st day of November, 1871, under the town-site act of Congress entitled 'An act for the relief of cities and towns upon the public lands,' approved March 2d, 1867; that on the 1st day of June, 1872, the same was conveyed by the Mayor of said Salt Lake City to the Trustee in trust of said corporation, in whom the title remained until the act of Congress of February 19th, 1887, took effect. * * * The legal title to the real estate known as the Temple Block, at the time said act of February 19th, 1887, went into effect was in John Taylor, as Trustee in trust for the said corporation, which said Trustee in trust subsequently and on the 30th day of June, 1887, attempted to convey the same to William B. Preston, Robert T. Burton and John R. Winder, as Trustees." (Record, pp. 83, 88, 85.)

That of said real estate the following described tract, viz: "Part of the west half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot, and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the Historian's office and grounds, of

the value of $20,000, * * * was taken possession of by Albert T. Rockwood in 1848, and was a part of the public domain, and continued to be such up to the 21st day of November, 1871, when the town site of Salt Lake City was entered as aforesaid; that on the 3d day of October, 1855, the Church of Jesus Christ of Latter-Day Saints, through its Trustee in trust, Brigham Young, purchased the said Rockwood's claim to said premises, and at its own cost and expense erected thereon a building, which has ever since been known as the Historian's Office and residence; that said building was large enough to accommodate the Historian's family and furnish an office for the Church Historian; that from the year 1848 until the time of his death in 1875 George A. Smith was the Historian of said Church and lived in said building with his family, and had the custody of the books, papers and records of said Church relating to its history or public action of its officers and members; that the same have always been kept in said building from the time of its construction until the present time, at the cost of said Church, and that said office is and has been necessary for the use of said Historian in the discharge of his duties; that in 1872 the said George A. Smith obtained the title to said premises from the Mayor of Salt Lake City under the town-site act, and that after his death the same was conveyed to his wife and one of his grand-daughters, who afterwards transferred and conveyed the same to Theodore McKean for a valuable consideration; that said Theodore McKean has ever since that date held, and now holds, the same on a secret trust for the use and benefit of said corporation; that said grounds are immediately west of and adjoining the Guardo-House grounds." (Record, pp. 83, 91, 92.

That of said real estate the following described tract or parcel, viz: "Part of lots three (3) and four (4) in block eighty-eight (88), as the same are platted and designated on Plat "A," Salt Lake City survey, County of Salt Lake, Utah Territory, and bounded as follows: Commencing at a point four (4) rods north of the southwest corner of said lot four (4), running thence north sixteen (16) rods, thence east twenty (20) rods, thence south twelve and one half ($12\frac{1}{2}$) rods, thence west fourteen (14) rods, thence south three and one half ($3\frac{1}{2}$) rods, thence west six (6) rods to the place of beginning, and being part of what is known as the Tithing Office and grounds, being of the value of $50,000, * * * was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time has been used and occupied by said Church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation, receiving and disbursing tithing and voluntary distributions of property, and that prior to July 1st, 1862, buildings and other improvements of considerable value had been built thereon by said church; that at the time said property was taken possession of as aforesaid it was a part of the public domain and continued to be such until the 21st day of November, 1871, when said land was entered as aforesaid, along with other lands, under said town-site act by the Mayor of Salt Lake City; that Brigham Young, who was then President and Trustee in trust of said corporation, claimed said land under said town-site law, and it was conveyed to him by Daniel H. Wells, Mayor of Salt Lake City; that in November, 1873, Brigham Young transferred and conveyed said property

to George A. Smith, as Trustee in trust of the corporation of the Church of Jesus Christ of Latter-Day Saints and his successor in office; that on the death of said George A. Smith the legal title in said premises vested in Brigham Young as such successor, and the Executors of said Brigham Young transferred and conveyed said property to John Taylor as the Trustee in trust of said corporation, who in April, 1878, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; that said Edward Hunter afterwards, to-wit: on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation, and on the 2d day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder and himself as Trustees."

(Record, pp. 83, 92.)

That of said real estate the following described parcel, viz: "All the south half ($\frac{1}{2}$) of lots five (5) and six (6), in block eighty-eight (88), as the same are platted and designated in Plat "A," Salt Lake City survey, in the County of Salt Lake, Utah Territory, said tract containing two hundred square rods of land, more or less, and being a part of what is known as the Tithing Office and grounds, being of the value of $25,000, * * * was possessed, acquired and owned as follows: In the year 1848 Newell K. Whitney, then Presiding Bishop of said Church of Jesus Christ of Latter-Day Saints, took possession of lot five, block eighty-eight, plat A, Salt Lake City survey, and in the same year Horace K. Whitney took possession of lot six, in said block; that sometime in the year 1856 the Church of Jesus Christ of Latter-Day Saints, by its

agents, took possession of the south half of said lots and placed thereon yards and corrals, and have continued to occupy the same with said yards and corrals down to this period; that in the year 1870 the Mayor of Salt Lake City entered the town site of Salt Lake City, in trust for the inhabitants and occupants thereof, under the law of 1867; that the foregoing lots are a portion of said entry.

"The said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court for a title to the south half of said lots, and the heirs of Newell K. Whitney also filed an application in the proper court for the south half of lot five, and Horace K. Whitney filed an application in the same court for the south half of lot six. The court awarded the title to the said premises to Brigham Young, as Trustee as aforesaid.

"That afterwards, in the year 1872, Brigham Young, Trustee, obtained a deed from the heirs of Newell K. Whitney to said south half of lot five, and in consideration thereof paid them seven thousand dollars, and at the same time the said Brigham Young, Trustee, obtained a deed from Horace K. Whitney of lot six and paid him therefor the sum of two thousand dollars.

"At the time the act of Congress of February 19th, 1887, took effect the legal title thereto was held by Robert T. Burton on a secret trust for the use and benefit of said corporation; that on the 2d day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder and himself, as Trustees." Record, pp. 83, 95, 96.)

Note. It will be observed that these four tracts or lots of real estate above described were acquired,

possessed and improved by the corporation, appellant herein, before July 1, 1862. That said corporation had vested rights in these lands and owned the equitable title thereto, and had put valuable improvements thereon, long prior to July 1, 1862, is beyond question. The attempt to bring all these four tracts of land under the limitation of the act of July 1, 1862, by averring and decreeing that the legal title did not vest in the Church corporation until after July 1, 1862, is unworthy of serious consideration by any Court of equity, in the light of the decisions of this Court rendered many years ago, finally and forever settling the law against any such inequitable and unjust ruling.

That of said real estate the following described tract, viz: "All the east half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning, known as the Guardo House and grounds, being of the value of $50,000, * * * was owned by Brigham Young individually at the time of his death, in 1877, and was thereafter transferred and conveyed by his executors to John Taylor, as Trustee in trust for the corporation of the Church of Jesus Christ of Latter-day Saints, for a valuable consideration, pursuant to the powers in them vested by the will of the said Brigham Young; that subsequently, on the 24th day of April, 1878, the said John Taylor, as trustee in trust, transferred and conveyed the same to Theodore McKean on a secret trust for said corporation, who held the same

upon said trust until the 2d day of July, 1887, when he attempted to convey the same to William B. Preston and Robert T. Burton and John R. Winder, Trustees. * * * Said Guardo House and grounds were used and occupied by said John Taylor, President of said Church, from 1878 up to the time of his death, as a residence." (Record, pp. 83, 88, 91.)

That the several tracts of land comprising the item of real estate designated as the "Church Farm," valued at $110,000, and the "Summit County" lands, valued at $30,000, described in paragraphs six and seven, on pages 83, 84 and 85 of the record, were acquired by said corporation, appellant herein, subsequent to the enactment of the act of Congress of July 1, 1862, but the legal title thereto was at all times held by persons in trust for said corporation upon secret trusts, and not by the corporation itself.

8. That at the time the said "Act of Congress of February 19th, 1887," took effect, said corporation owned, held and possessed personal property of great value, a schedule of which is set forth in the findings; that the accumulation of said personal property by said corporation extended over a period of twenty years or more; that said corporation "was in its nature and by its statute of incorporation a *religious and charitable corporation* for the purpose of promulgating, spreading, and upholding the principles, practices, teachings and tenets of said Church, *and for the purpose of dispensing charity*," and that "it never had any other corporate objects, purposes and authority;" that it "never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized under its act and charter of incorporation to take or hold any personal property or

estate of said corporation, except the Trustees provided for by said statute of incorporation;" that prior to the passage of said act of Congress the personal property of said corporation "had been used for and devoted to the promulgation, spread and maintenance of the doctrine, teachings, tenets and practices of said Church;" that "the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets and practices of the said late Church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints."

"That certain of the officers of said religious sect regularly ordained and certain public preachers and teachers of said religious sect, who are in good standing and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February 19th, 1887, promulgated, taught, spread and upheld the same doctrines, tenets and practices, including the doctrine of polygamy, as were formerly promulgated, taught and upheld by the said late corporation, and the said teachings of the said officers, preachers and teachers have not been repudi-

ated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect.

"That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of, or in trust for, the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints or any of them would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints." (Record, pp. 96, 97, 98.)

Upon these findings the Court entered in substance the following

DECREE.

1. "That on the 3d day of March, 1887, the corporation of the Church of Jesus Christ of Latter-Day Saints became and the same was dissolved, and that since said date it has had no legal corporate existence."

2. Decreeing the deeds of Taylor, McKean and Burton conveying "Temple Block," "Guardo House" and "Tithing House" to Preston, Burton and Winder, Trustees appointed by the Probate Court, void and cancelled.

These deeds appear in the findings of fact beginning respectively on pages 85, 88 and 92 of the record, and are the deeds made Exhibits with the answer of the appellant corporation. See Record, pp. 37–45.

3. Setting apart "Temple Block"—being block eighty-seven, in plat A, Salt Lake City Survey, "to the

voluntary religious worshipers and unincorporated sect and body known as the Church of Jesus Christ of Latter-Day Saints, * * * for the erection and use by them of houses of worship and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body."

4. Denying the petitions of Preston, Burton and Winder to set apart to them as Trustees certain other parcels of real estate, and decreeing that no part of said real estate has ever been used as parsonage property by said corporation.

5. Decreeing that the *legal title* to all of the real estate set out in the findings of fact was acquired by said corporation subsequent to July 1, 1862, and that "prior to said date neither the said corporation, nor its Trustees, had any *legal title or estate* in and to said real estate, or any part thereof."

Note. The findings show conclusively that the corporation had acquired an equitable title and estate, and owned vested rights in four valuable tracts of this real estate, and had possessed, occupied and improved the same many years prior to July 1, 1862, but the decree is utterly silent upon that point.

6. Denying the intervening petition of Romney, Dinwoody, Watson and Clark, filed in behalf of themselves and all other members of said corporation.

7. The seventh paragraph of the decree cannot well be abridged. The entire paragraph is as follows:

"7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution

and do not now exist any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used or to which it could be dedicated that were and are not in whole or in part opposed to public policy, good morals, and contrary to the laws of the United States; and, furthermore, that there do not exist any natural persons or any body, association or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-Day Saints, nor have there been nor are there now any trusts of a definite and legal character upon which this Court, sitting as a court of chancery, can administer the personal property hereinbefore set out; and it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-Day Saints has by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the trusts to which it was dedicated at its acquisition and for which it had been used by said late corporation and by operation of law, become escheated to and the property of the United States of America, subject to the costs and expenses of this proceeding and of the receivership by this court instituted and ordered."

Note. There is not an averment in the bill, or in the prayer of the bill, or in the acts of Congress upon which the bill is based, even tending to support this paragraph of the decree.

8. Continuing the Receivership pending the proceedings upon information against the real estate, on

the ground that from March 3, 1887, there has not been any person authorized legally to possess, hold and manage the real and personal property at that date belonging to the corporation, appellant herein.

(Record, pp. 98–101.)

ASSIGNMENT OF ERRORS.

Upon the record, rulings and decree the appellants assign the following errors:

1. The Court erred in entering the order appointing a Receiver.

2. The Court erred in overruling appellants' demurer to the bill of complaint.

3. The Court erred in decreeing that the corporation, appellant herein, was dissolved on March 3d, 1887, by virtue of the act of Congress of that date.

4. The Court erred in holding the act of Congress of July 1, 1862, constitutional and valid in so far as it purports and attempts to limit the powers, franchises and grants given to and accepted by the corporation, appellant herein, many years prior to July 1, 1862. For that the Court ought to have held said act in said respect unconstitutional and void as impairing and annulling the obligations of a contract.

5. The Court erred in seizing and depriving the corporation, appellant herein, of the use, possession and enjoyment of real estete and personal property, in good faith acquired by it, under its charter powers, long prior to the enactment of the act of Congress of July 1, 1862.

6. The Court erred in holding and decreeing that the act of Congress of March 3, 1887, is constitutional and valid in so far as it purports or attempts to repeal the charter of, and annul and dissolve the corporation,

appellant herein. For that the Court ought to have held and decreed said act in said respects unconstitutional and void as impairing, annulling and superseding the obligations of a contract accepted, relied upon, and act-under, for more than thirty years.

7. The Court erred in holding and decreeing that the act of Congress of March 3, 1887, is constitutional and valid in so far as it attempts or purports to confer upon the United States, or the officers or agents thereof, power or authority to seize, possess and hold as forfeited and escheated to the United States any real estate owned by said corporation on March 3, 1887. For that the Court ought to have decreed said act unconstitutional and void in said respect, because if it shall finally be held that said act is valid in so far as it repealed the charter of said corporation, and if said corporation shall finally be adjudged dissolved, still, upon such dissolution, the real estate and property belonging to said corporation ought in law and equity to be adjudged to be and become the property of the individual members of said corporation at the date of its dissolution, charged with the same trusts, uses and purposes under which it was acquired and held by said corporation.

8. The Court erred in decreeing that the tract of land and buildings thereon known and designated as the "Guardo House and grounds," has not been used and occupied by said corporation ever since the year 1878 as the parsonage of said Church corporation, the said decree being in this respect contrary to, and unsupported by, the findings of fact.

9. The Court erred in failing and refusing to decree that said corporation, appellant herein, did long prior to July 1, 1862, own an equitable title to, and did own,

possess and hold vested rights in the several tracts and lots of real estate known and designated as "Temple Block," "Tithing Office and grounds," and "Historian's Office and grounds" in accordance with the facts found by the Court.

10. That if this Court shall finally hold that the act of Congress of July 1, 1862, is valid and that said act repealed and annulled the charter of said Church corporation, then appellants claim and aver that the Court below erred in denying and refusing to grant the petition of intervention of Romney, Dinwoody, Watson and Clark, because, under the facts found, the Court ought in law and equity to have decreed that said petition be granted.

11. The Court erred in decreeing that the Receivership of the real estate seized from said corporation be continued, because, under the facts found, the Court ought in law and equity to have dissolved said receivership and restored the possession of said real estate to its rightful and lawful owners.

12. The Court erred in rendering and entering the seventh paragraph of said decree, and each and every part and statement thereof, and in decreeing that all and entire the personal property and estate belonging to said corporation, appellant herein, has become escheated to, and the property of, the United States of America.

Because the bill of complaint herein utterly fails to support or warrant said seventh paragraph of the decree:

Because the acts of Congress, upon which this suit is based, do not give, or purport to give, to the United States or its officers, agents or Courts any power, right or authority to seize, confiscate, forfeit or escheat to the United States any of the personal property and estate

of and belonging to said corporation, appellant herein:

Because said seventh paragraph of the decree is contrary to law, and is wholly unsupported by the findings of fact:

Because by said seventh paragraph of said decree the Court purports, attempts and intends to divert said personal property and the proceeds thereof from the religious and charitable trusts to which it was dedicated:

Because if it be finally held that the act of Congress of July 1, 1862, repealed and annulled the charter of said Church corporation, or if it be finally held that the act of Congress of March 3, 1887, repealed and annulled the charter of said Church corporation, in either case the findings of fact show that said personal property was accumulated and acquired partly prior to, and partly subsequent to, the enactment of the act of Congress of July 1, 1862, and that the same, and its proceeds and income, was used in the support of religious worship, and in dispensing charity by said corporation while it remained a corporation, and that the religious sect now, and at the time of the commencement of this suit, known as the Church of Jesus Christ of Latter-Day Saints, comprises and includes the body of individuals composing the membership of said Church corporation while the same existed, and has and maintains the same form of organization and government for religious worship, and for dispensing charity, that was had and maintained by said corporation while the same existed, and that therefore the Court ought in law and equity to have decreed that if said Church and charitable corporation has ceased to exist as a corporation, the said personal property, and the ownership, management and dispensation thereof, have vested in and become the property of

said religious and charitable organization or association, now found by the Court to exist as the Church of Jesus Christ of Latter-Day Saints, charged with the same charitable trusts, uses and purposes to which the same was originally dedicated.

ARGUMENT.

This suit is based upon two acts of Congress. The portions of these acts necessarily involved in the discussion and decision of the case are here set forth.

AN ACT APPROVED MARCH 3, 1887.

"An act to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two.

"Sec. 13. That it shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled 'An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah,' or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Pro-

vided, That no building or the grounds appurtenant thereto which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited.

"Sec. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers and documents of or belonging to any Trustee or person holding or controlling or managing property in which such corporation may have any right, title or interest whatever.

"Sec. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power and it shall be its duty to make such decree or decrees as shall be proper to effectuate the

transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith and burial grounds and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act to the respective Trustees mentioned in section twenty-six of this act, and for the purposes of this section said court shall have all the powers of a court of equity.

"Sec. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through Trustees appointed by any Court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation."

ACT APPROVED MARCH 3, 1862.

"An act to punish and prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person having a husband or wife living who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States has exclusive jurisdiction, shall, except in the cases specified in the proviso of this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not

exceeding five hundred dollars and by imprisonment for a term not exceeding five years: Provided, nevertheless, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living, nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent Court, nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent Court on the ground of the nullity of the marriage contract.

"Sec. 2. And be it further enacted, That the following ordinance of the provisional government of the State of Deseret, so-called, namely, 'An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints,' passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January nineteen, in the year eighteen hundred and fifty-five, entitled 'An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,' and all other acts and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah, which establish, support, maintain, shield or countenance polygamy be, and the same are, disapproved and annulled: Provided, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned nor with the right 'to worship God according to the dictates

of conscience,' but only to annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations or other contrivances.

"Sec. 3. And be it further enacted, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars, and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: Provided, That existing vested rights in real estate shall not be impaired by the provisions of this section."

The following provision of section 13, viz: "It shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of *corporations* obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862," clearly and expressly limits the application and enforcement of the act of March 3, 1887,—in so far as it requires the institution and prosecution of proceedings to forfeit and escheat property to the United States,—*to property acquired and held by corporations in violation of the provisions of the act of July 1, 1862.*

In other words, the act of March 3, 1887, is in its essential parts dependent upon the act of July 1, 1862. It therefore becomes necessary for the Court to consider,

first, the act of July 1, 1862, and determine whether or not it is valid, and if valid, what is its scope and effect.

PROPOSITION I.

1. The act of Congress of July 1, 1862, is unconstitutional and void, in so far as it purports, by the second section thereof, to disapprove, annul, and repeal any portion of the acts and ordinances of the Legislative Assembly of the Territory of Utah incorporating and chartering the Church of Jesus Christ of Latter-Day Saints, except such portion of said acts and ordinances —if any there be—as establish, shield or countenance polygamy.

And in so far as said act purports, by the third section thereof, to limit the power and right of said corporation, granted by its charter, to acquire and hold real estate without limitation as to the amount or value thereof.

First. Because said charter was and is an executed, unconditional contract, the obligations of which would be impaired, annulled and superseded by the repeal of said charter, or by the attempted limitation of the franchises, rights and powers thereof in respect to the acquirement of real estate.

Second. Because by the act of Congress of September 9, 1850, full power and authority was granted to the Territory of Utah to legislate upon, and pass laws regarding, "all rightful subjects of legislation," including the power and authority to create private corperations; and because no right to repeal, alter or limit the rights, powers and franchises, vested in said Church corporation, was reserved in the act of incorporation, or in any other act or law of the said Territory of Utah.

Third. Because the power reserved by Congress in said enabling act of September 9, 1850, to disapprove and annul laws enacted by the Legislature of said Territory did not, and does not, reserve to Congress the right or power to annul, supersede or impair the obligations of executed contracts lawfully made and entered into by said Territory by and through the acts of its legislative assembly: And because even if the power to disapprove and annul the charter of said Church corporation was reserved to Congress, still the United States would in equity be conclusively held to have approved said charter after the same had been accepted, relied upon and, acted under, for from seven to ten years before the passage of the said act of Congress of July 1, 1862, with the full knowledge of the Congress of the United States.

The act of July 1, 1862, is certainly an admission upon the part of the United States that the Church corporation then had a legal existence, and was then in the lawful possession and use of the rights, powers and franchises granted by the ordinance of incorporation.

It is also an admission by Congress that the corporation had, prior to July 1, 1862, legally acquired property, otherwise the provision of the act, "That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned," would be meaningless.

The ordinance of incorporation provides that the incorporators "are hereby incorporated, constituted, made and declared a body corporate, *with perpetual suc-*

cession, under the original name and style of 'The Church of Jesus Christ of Latter-Day Saints' as now organized, with full power and authority to sue and be sued, defend and be defended, in all Courts of law or equity in this State; to establish, order and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure. * * * That said body or Church, *as a religious society*, may, at a general or special conference, elect one 'trustee in trust,' and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use and control the real and personal property of said CHURCH. * * * Said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well being of said Church." (Record, pp. 4, 5.)

These clauses of the charter are quoted for the purpose of establishing two points, viz:

First. That no right of repeal or limitation was reserved in the charter, but that, on the contrary, it expressly grants the charter franchises in *perpetuity;* and

Second. That the corporation created by this charter is a *religious society*—a CHURCH CORPORATION.

It will not be claimed that there was, at the time this charter was legalized and made valid by the Legislature of the Territory of Utah, or that there ever has been, any general law or ordinance of said Territory reserving the right to alter, amend, or repeal charters granted to private corporations.

The exact time at which the charter was legalized by the Territorial Legislature is in dispute. The United States admits in the bill that the ordinance of incorporation was "on the 19th day of January, in the year 1855, re-enacted by the Legislature and approved by the Governor of the Territory of Utah." (Record, p. 1.)

Appellants claim that the original ordinance of incorporation was legalized and made operative and valid by the following joint resolution, adopted by the Legislature and approved by the Governor of the Territory of Utah, on October 4, 1851.

"Joint resolution legalizing the laws of the provisional government of the State of Deseret.

(1.) Resolved by the Legislative Assembly of the Territory of Utah, That the laws heretofore passed by the provisional government of the State of Deseret, and which do not conflict with the 'organic act' of said Territory, be, and the same are hereby, declared to be legal and in full force and virtue, and shall so remain until superseded by the action of the Legislative Assembly of the Territory of Utah.

Approved October 4, 1851." (Record, p. 34.)

It is of no great importance which date is adopted. The re-enactment of the Charter on January 19, 1855, would doubtless confirm and validate all previous action of the corporation in the exercise of its franchises in good faith, and would legalize its right to property theretofore acquired.

If the joint resolution of October 4, 1851, gave a legal existence to the Church corporation, it had lawfully existed and exercised its franchises for over ten years prior to the passage of the act of Congress of July 1, 1862. If the act of the Territorial Legislature

of January 19, 1855, gave the Church corporation its first legal existence, it had been in lawful possession and exercise of its corporate franchises for more than seven years prior to the enactment of the act of Congress of July 1, 1862.

It is admitted by the United States that the incorporators of the Church corporation accepted the charter the instant it was granted, and immediately used and exercised the corporate powers and franchises granted by the charter. This charter was, therefore, on July 1, 1862, an executed, unconditional contract, if the unconditional grant of corporate rights, powers and franchises by the Territorial Government of Utah, and the full acceptance of such grant of corporate franchises, could constitute a contract, or create obligations in the nature of contract obligations.

If this charter had been granted by a State instead of a Territorial Government, without reserving the right to amend, limit or repeal, and expressly granting perpetual franchises, as this charter does, there could be no question that the charter could neither be limited nor repealed after its acceptance and rights had been acquired under it. The law is well settled on that point.

"Under this clause (tenth section of first article of United States Constitution) it has been settled that the charter of a private corporation, whether civil or eleemosynary, is an executed contract between the government and the corporators, and that the legislature can not repeal, impair or alter it, against the consent or without the default of the corporation judicially ascertained and declared. * * *

"In consequence of the construction that has been put upon the clause of the Constitution above quoted,

it has become usual for Legislatures, in acts of incorporation for private purposes, either to make the duration of a charter conditional, or to reserve to themselves a power to alter, modify or repeal the charter at their pleasure."

Angell & Ames on Corporations, Sec. 767.

"If, however, the franchise is conferred by a contract or treaty on the part of the State, and is absolute in terms, it must be regarded as an irrevocable right. A reservation in a grant or contract, that the grantor or contracting party may annul or alter his own grant or contract, can never be implied; the performance of a contract is never *impliedly* optional. Hence, if a franchise is conferred by a contract or grant on the part of a State, the State cannot revoke or alter it in its capacity of grantor, unless the right to revoke or alter it was expressly reserved. Nor can the State revoke or alter it in the exercise of the sovereign power of legislation, for that is prohibited by the Constitution of the United States."

Morawetz on Private Corporations, Second Edition, Sec. 1050.

Mr. Chief Justice Marshall said: "An artificial immortal being was created by the Crown, capable of receiving and distributing forever, according to the will of the donors, the donations which should be made to it. On this being, the contributions which had been collected were immediately bestowed. These gifts were made, not indeed to make a profit for the donors or their posterity, but for something in their opinion of inestimable value; for something which they deemed a full equivalent for the money with which it was purchased. The consideration for which they stipulated is

the perpetual application of the fund to its object in the mode prescribed by themselves. Their descendants may take no interest in the preservation of this consideration. But in this respect their descendants are not their representatives; they are represented by the corporation. The corporation is the assignee of their rights, stands in their place, and distributes their bounty as they would themselves have distributed it, had they been immortal. So with respect to the students who are to derive learning from this source. The corporation is trustee for them also. Their potential rights, which, taken distributively, are imperceptible, amount collectively to a most important interest. These are, in the aggregate, to be exercised, asserted and protected by the corporation. . . . This is plainly a contract to which the donors, the trustees, and the Crown (to whose rights and obligations New Hampshire succeeds), were the original parties. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate has been conveyed to the corporation."

Dartmouth College v. *Woodward*, 4 Wheat. 642, 643.

In the same case Mr. Justice Story said: "The corporation was expressly created for the purpose of distributing in perpetuity the charitable donations of private benefactors. By the terms of the charter the trustees and their successors, in their corporate capacity, were to receive, hold, and exclusively manage all the funds so contributed. The Crown, then, on the face of the charter, pledged its faith that the donations of private benefactors should be perpetually devoted to their original purposes, without any interference on its own

part, and should be forever administered by the trustees of the corporation, unless its corporate franchises should be taken away by due process of law. From the very nature of the case, therefore, there was an implied contract on the part of the Crown with every benefactor, that, if he should give his money, it should be deemed a charity protected by the charter, and be administered by the corporation according to the general law of the land. As soon, then, as a donation was made to the corporation, there was an implied contract springing up, and founded on a valuable consideration, that the Crown would not revoke or alter the charter, or change its administration, without the consent of the corporation. There was also an implied contract between the corporation itself, and every benefactor, upon a like consideration, that it would administer his bounty according to the terms and for the objects stipulated in the charter."

Dartmouth College v. *Woodward*, 4 Wheat, 689.

The decision of this Court in case of *Terrett* v. *Taylor*, 9 Cranch, 50, 51, 52, is a very clear and instructive announcement of the law upon the point under consideration. In that case the Legislature of Virginia had, by laws passed in 1798 and 1801, undertaken to forfeit, escheat and confiscate to the State all the real estate and property of the Episcopal Churches in all the parishes of the State, which property had been acquired and was then held by the Church under grants of corporate powers and franchises from the Crown, and re-granted or confirmed by the statutes of 1776 and 1784. The attempted repeal was based on the ground that the corporate franchises and powers of the Church corporation were inconsistent with, and repugnant to, the State Constitution and the principles of religious

freedom. In rendering the decision of this Court in favor of the Church corporation, Mr. Justice Story said:

"The property was, in fact and in law, generally purchased by the parishioners, or acquired by the benefactions of pious donors. The title thereto was indefeasibly vested in the churches, or rather in their legal agents. It was not in the power of the Crown to seize or assume it; nor of the parliament itself to destroy the grants, unless by the exercise of a power the most arbitrary, oppressive and unjust. * * * The State itself succeeded only to the rights of the Crown; and, we may add, with many a flower of prerogative struck from its hands. It has been asserted as a principle of the common law, that the division of an empire creates no forfeiture of previously vested rights of property. * * * This principle is equally consonant with the common sense of mankind and the maxims of eternal justice. Nor are we able to perceive any sound reason why the church lands escheated or devolved upon the State by the Revolution any more than the property of any other corporation created by the royal bounty or established by the legislature. * * * The statute of 1776, c. 2, operated as a new grant and confirmation thereof to the use of the church.

"If the Legislature possessed the authority to make such a grant and confirmation, it is very clear, to our minds, that it vested an indefeasible and irrevocable title. We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*. * * * A private corporation created by the Legislature may lose its franchises by a misuser or a

non-user of them; and they may be resumed by the Government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. * * * But that the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired under faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

The principle decided in *Terrett* v. *Taylor* is fully confirmed by subsequent decisions of this Court.

In *Wilkinson* v. *Leland*, 2 Peters, 657, in holding that the Legislature of Rhode Island was without power to divest titles to real estate lawfully acquired, by virtue of mere arbitrary legislative enactment, Mr. Justice Story said:

"Even if such authority could be deemed to have been confided by the charter to the General Assembly of Rhode Island, as an exercise of transcendental sovereignty before the Revolution, it can scarcely be imagined that that great event could have left the people of that State subjected to its uncontrolled and arbitrary exercise. That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to

require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in this country, would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. * * * A grant or title to lands once made by the Legislature to any person or corporation is irrevocable. * * * We know of no case in which a legislative act to transfer the property of A to B, without his consent, has ever been held a constitutional exercise of legislative power in any State in the Union."

In the case of *The Binghamton Bridge*, 3 Wall., 73, Mr. Justice Davis said:

"We have supposed, if anything was settled by an unbroken course of decisions in the Federal and State courts, it was that an act of incorporation was a contract between the State and the stockholders. All courts at this day are estopped from questioning the doctrine. The security of property rests upon it, and every successful enterprise is undertaken in the unshaken belief that it will never be forsaken.

"A departure from it *now* would involve dangers to society that can not be foreseen, would shock the sense of justice of the country, unhinge its business interests, and weaken, if not destroy, that respect which has always been felt for the judicial department of the Government."

In *West River Bridge Company* v. *Dix*, 6 How., 534, this Court said:

"A franchise is property, and nothing more; it is

incorporeal property, and is so defined by Justice Blackstone. * * * It is its character of property only which imparts to it value."

In *Pennsylvania College Cases*, 13 Wall., 212, 213, Mr. Justice Clifford said:

"Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as the grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no State shall pass any law impairing the obligations of contracts. Charters of private corporations are regarded as executed contracts between the Government and the corporators, and the rule is well settled that the Legislature can not repeal, impair or alter such a charter against the consent or without the default of the corporation judicially ascertained and declared. Of course these remarks apply only to acts of incorporation which do not contain any reservations or provisions annexing conditions to the charter modifying and limiting the nature of the contract. Cases often arise where the Legislature, in granting an act of incorporation for a private purpose, either makes the duration of the charter conditional or reserves to the State the power to alter, modify or repeal the same at pleasure."

In *Miller* v. *State*, 15 Wall., 488 and 494, Mr. Justice Clifford said:

"Subsequent legislation, altering or modifying such charter, where there is no such reservation, is plainly unauthorized, if it is prejudicial to the rights of the corporators, and was passed without their assent. Where such a provision is incorporated in the charter, it is clear that it qualifies the grant, and that the subsequent

exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution. Such power also, that is the power to alter, modify, or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all acts of incorporation, or to certain classes of the same, as the case may be; in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation, and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition, nor any allusion to such a reservation. * * * Unless a power be reserved for this purpose the Crown cannot, in virtue of its prerogative, alter or amend the charter or divest the corporation of any of its franchises, or add to them, or augment or diminish the number of trustees, or remove any of the members, or change or control the administration of the funds, or compel the corporators to receive a new charter."

In the case of *The Delaware Railroad Tax*, 18 Wall., 225, Mr. Justice Field said:

"That the charter of a private corporation is a contract between the State and the corporators, and within the provision of the Constitution prohibiting legislation impairing the obligation of contracts, has been the settled law of this Court since the decision in the Dartmouth College case. Nor does it make any difference that the uses of the corporation are public, if the corporation itself be private. The contract is equally protected from legislative interference, whether the public be interested in the exercise of its franchise or the charter be granted for the sole benefit of its corporators. This doctrine is not contro-

verted by any one; it is the established law; and the question in all cases, when it becomes necessary to apply it, is whether the particular legislative interference alleged does in fact impair the obligation of the contract; for it is not every kind of legislative interference with the powers, action, and property of the corporation which will have that result."

In the case of *Farrington* v. *Tennessee*, 95 U. S., 683, 684, Mr. Justice Swayne said:

"A contract is executed where everything that was to be done is done, and nothing remains to be done. A grant actually made is within this category. Such a contract requires no consideration to support it. A gift consummated is as valid in law as anything else. * * *

"It was settled at an early period that it was the prerogative of the king to create corporations; but he could not grant the same identical powers to a second corporation while the prior one subsisted, and, unless the power was reserved, he could not alter, amend, or annul a charter without the consent of the corporate body to which it belonged. * * *

"In the worst times of English history no attempt was made by the Crown to do either of these things *in invitum*."

In the case of *Greenwood* v. *Freight Co.*, 105 U. S., 16, 17, Mr. Justice Miller said:

"We think it must be conceded that, according to the unvarying decisions of this Court, the unconditional repeal of the charter of the Marginal Company is void under the Constitution of the United States, as impairing the obligation of the contract made by the acceptance of the charter between the corporators of that company and the State, unless it is made valid by that

provision of the General Statutes of Massachusetts, called the reservation clause, concerning acts of incorporation."

The same general doctrine is held in the following cases:

Holyoke Co. v. *Lyman*, 15 Wall., 511.
Humphrey v. *Pegues*, 16 Wall., 249.
Davis v. *Gray*, 16 Wall., 232.

In the case of *New Jersey* v. *Yard*, 95 U. S., 104, this Court held that an irrevocable grant of corporate franchises might be made by the Legislature notwithstanding the fact that a general law had previously been enacted reserving the right to amend or repeal all corporation charters granted after its passage. In announcing the opinion of the Court Mr. Justice Miller sums up the law on the point under discussion in these words:

"It has become the established law of this Court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the State within the protection of the clause referred to of the Federal Constitution."

These authorities establish the following points beyond controversy, viz:

1. That this charter of the Church corporation constituted a contract between the sovereign—the Territorial Government granting the charter—and the incorporators accepting the charter as granted.

2. That the corporate franchise of the Church corporation, when granted and accepted, became property, and

3. That the charter cannot be altered, limited or repealed, unless the right to amend, limit or repeal was reserved in the charter, or in some general law in existence when the charter was granted.

If it is contended that the United States is not bound by the constitutional provision prohibiting States from passing laws impairing the obligations of contracts, but is free to ignore and trample under foot contract obligations at will, the decisions of this Court furnish full and complete answer in denial of such claim and contention.

In the decision of the *Sinking Fund Cases*, 99 U. S., 718, 719, Mr. Chief Justice Waite settled this question in the following clear and explicit announcement of the law:

"The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligations of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had

been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation."

While the majority of the Court in this case held the law to be constitutional, they did so solely on the ground that they found that the law did not impair the obligations of the contract, but three of the Justices dissented from that opinion, holding that the law itself was unconstitutional, because it did impair the obligations of contracts. The dissenting Justices were Field, Strong and Bradley, each of whom filed carefully prepared dissenting opinions, to which we refer the Court.

This same principle was in effect decided in the same way by this Court in the earlier cases of *Dartmouth College* v. *Woodward*, 4 Wheaton, 675, and *Miller* v. *State*, 15 Wall., 494.

It is not claimed that any reservation of the right to amend, limit or repeal the charter can be found either in the charter or in any law of the Territory of Utah.

The only claim of such right to amend or repeal, asserted by the solicitors for the United States, is that the act of Congress of September 9, 1850, creating a Territorial Government for the Territory of Utah, reserved to Congress the right to repeal and annul this charter. The words of that act, upon which this claim is based, are: "All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect." (U. S. Stats. at Large, vol. 9, p. 454.)

It will be observed that even in the broadest possible

interpretation of this law—giving it the widest scope that can possibly be claimed for it by the solicitors for the United States—it utterly fails to support the third section of the act of Congress of July 1, 1862, as applied to the church corporation. It does not, under any possible interpretation, purport or intend to reserve to Congress *the right to amend, limit or alter the laws passed and approved by the Legislative Assembly and Governor of the Territory of Utah.* The only right reserved to Congress is to render laws of the Territory "null and of no effect" *by disapproving them.* Congress reserved no right to take the place of the Territorial Legislature and legislate for the Territory by *amending, changing or limiting acts of the Territorial Legislature.*

It therefore follows of necessity that the attempt to limit the power of the Church corporation as to the value of real estate it might acquire, as attempted by the third section of the act of Congress of July 1, 1862, cannot be held valid as against this Church corporation, because it is an attempt by Congress to *amend* the charter granted by the Territorial Legislature.

It may, if valid at all, well apply to corporations created by Territorial laws after its passage, because it becomes a limitation upon the power of the Territorial Legislature as to future legislation in granting corporate franchises.

As to the claim that these words of the act of September 9, 1850, above quoted, give Congress the right to annul the charter of the Church corporation and blot out its corporate franchises, after the charter had been accepted and its franchise rights had been exercised for many years with the full knowledge of Congress,

Two propositions are submitted:

1. That Congress did impliedly approve the charter of the Church corporation by permitting it to exist, and vested rights and property to be acquired and accumulated under it, for from seven to ten years without disapproval, and that equity and good conscience require the Court to hold such approval conclusive against the United States.

This claim is the more potent because, under the language of the law of Congress above quoted, *the silence and non-action of Congress is approval.* To nullify any territorial law *required the active disapproval of Congress.* Where by the express terms of the law silence meant consent and approval, good faith and common justice required of Congress *prompt disapproval* of territorial laws not approved. If this charter was once approved by Congress, it could not, years afterward, be annulled and disapproved by Congress, because the approval of the charter by Congress made the United States a party to the charter contract, as well as the Territory of Utah, and it has already been shown that the United States is as powerless as a State to pass laws impairing the obligations of contracts.

Section three of the act of Congress of September 9, 1850, entitled "An act to establish a Territorial Government for Utah," provides "That there shall be a secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States: he shall record and preserve all the laws and proceedings of the Legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the

first day of December in each year, to the President of the United States, and, at the same time, two copies of the laws to the Speaker of the House of Representatives and the President of the Senate, for the use of Congress."

U. S. Stats. at Large, vol. 9, p. 453.

The legal presumption is that this law was obeyed. That presumption, in the absence of any claim or proof of disobedience of the law, ought to be held conclusive against the United States.

The solicitors for the United States admit in the bill that the Territorial Legislature re-enacted and confirmed the charter of the Church corporation on January 19, 1855. The Territorial law, re-enacting the charter of the Church corporation, was submitted to the Congress of the United States in December, 1855. Between January 19, 1855, and July 1, 1862, seven sessions of Congress were held. Appellants contend that this charter, when submitted to the session of Congress that met in December, 1855, *stood approved by Congress* when that session of Congress adjourned *without disapproving the charter*. To hold otherwise would be to trifle with justice and with the rights of the members of the Church corporation who were devoting their means to the acquirement of property and vested rights for the corporation, relying in good faith upon the validity and legality of its charter. But Congress approved and confirmed this charter by uttering no word of disapproval during seven full sessions before it undertook to amend, limit or blot out the franchises granted to the corporation by passing the act of July 1, 1862.

It seems impossible for a court of equity to hold

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such an act valid. On the contrary, every principle of equity and just dealing would seem to require the Court to hold that Congress must be conclusively held to have approved the charter years before the act of July 1, 1862, was passed, and that Congress, having approved the charter by seven years of silence and non-action, during which property and vested rights were acquired by the corporation under its charter, could not withdraw its approval and amend, limit, change or annul the charter and its contract obligations. To hold the act of July 1, 1862, valid will be to hold that the Congress of the United States can not only set aside and annul a contract lawfully made by the Territorial Legislature, but that it can set aside, annul and impair the obligations of a charter contract which it has approved and confirmed for over seven years.

In the case of *Clinton* v. *Englebrecht*, 13 Wall., 446, Mr. Chief Justice Waite, in holding that Congress had, *by silence, approved* the jury law of the Territory of Utah enacted by its Territorial Legislature, said:

"In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws, on or before the first of the next December in each year. The simple disapproval by Congress at any time, would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

In the case at bar the charter of the Church corporation had been on the statute-book of the Territory

for over seven years, as admitted by the bill, and for more than ten years, if the joint resolution of the Territorial Legislature of October 4, 1851, gave legal validity to the ordinance of incorporation, before Congress attempted to amend or annul it by passing the act of July 1, 1862. During all these years the Church corporation was accumulating property and acquiring vested rights and equitable interests in real estate, relying upon its charter, with full knowledge of Congress. Under these circumstances, equity and good conscience require that the presumption of approval, arising from the silence and non-action of Congress, for from seven to ten years, be held conclusive against the United States. If this charter was approved by the consent of Congress, evidenced by seven to ten years of failure to disapprove it, then Congress was powerless in 1862 to either annul or amend, or limit the charter, because, by approval, the United States became a party to the charter contract along with the Territorial Government.

2. The second proposition, in answer to the claim of the solicitors for the United States, that by the last clause of the sixth section of the act of September 9, 1850, hereinabove quoted, Congress reserved the right to annul and repeal this charter, is this: The reservation to Congress by that act of power to annul laws passed by the Territorial Legislature by disapproval, does not extend to, or embrace, special contracts lawfully entered into by the Territorial Legislature under its powers to exercise general legislation. The words of the act are: "The legislative power of said Territory shall extend to all rightful subjects of legislation." It cannot be doubted that this grant of power gave the Territorial Legislature full authority to grant charters

giving corporate rights, powers and franchises to private corporations. It has already been shown that such charters constitute contracts. It was never intended by the reservation of the sixth section of the act of September 9, 1850, to give Congress the right to annul and blot out the charters of private corporations, seven, ten or thirty years after they had been granted, and after property and vested rights had been acquired under them. Such an interpretation of the act is too monstrous and inequitable to merit consideration by a Court of equity. The reservation was undoubtedly intended to apply to the general laws providing for the administration of the general government of the Territory, and outlining its political and governmental policy. The theory of the United States in respect to all of its Territorial Governments has always been to leave to the inhabitants of the Territory all the powers of self-government, and all matters of internal legislation consistent with the ultimate sovereignty of the National Government. In *Clinton* v. *Englebrecht*, 13 Wall. 441, Mr. Chief Justice Waite very clearly announced this theory in the following statement:

"The theory upon which the various governments for portions of the territory of the United States have been organized has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress. As early as 1784 an ordinance was adopted by the Congress of the Confederation providing for the division of all the Territories ceded, or to be ceded, into States, with boundaries ascertained by the ordinance. These States were severally authorized to adopt for the

temporary government the constitution and laws of any one of the States, and provisions made for their ultimate admission by delegates into the Congress of the United States. We thus find the first plan for the establishment of governments in the Territories, authorized the adoption of State governments from the start, and committed all matters of internal legislation to the discretion of the inhabitants, unrestricted otherwise than by the State Constitution originally adopted by them."

The decision of this Court in the case of *Trustees for Vincennes University* v. *State of Indiana*, 14 How., 271-278, is instructive on several points involved in the decision of the case at bar.

Indiana Territory was organized by the act of Congress of May 7, 1800. Such powers to legislate were given to the Territory as were granted by the Ordinance of 1787. That ordinance contained the following grant of legislative power, viz: "The Governor, legislative council and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles of this ordinance."

This grant of power is in substance the same as that conferred upon the Territory of Utah. Congress by act of March 26, 1804, reserved an entire township of land in the Vincennes land district for the use of a seminary of learning. In 1806 the Territorial Legislature passed a charter law incorporating the Vincennes University, and vested the reserved township of land in said University, giving its Trustees power to sell not exceeding four thousand acres of the land for University purposes, and directing them to hold and rent the re-

mainder of the land for the use of the University. This was done, and the University, by its Trustees, continued to hold the unsold land, and received their rent during the Territorial Government.

In 1816 Indiana was admitted as a State, and the Territorial Government ceased to exist. In 1820 the Indiana Legislature took possession of the unsold lands as belonging to the State, and in 1822 appointed a commissioner to sell the land. The lands were sold, and the money received for them was paid into the State Treasury. In 1846 the Vincennes University filed a bill, under permission granted by a special act of the Indiana Legislature, against the State to try the right of the University to the proceeds of the lands sold by the State, and the rents therefrom, received by the State. In the final decision of the case this Court held:

1. That the Territorial Legislature had power to create the corporation.

2. That it was a private corporation.

3. That the right to the lands vested in the University corporation when it was created.

4. That the admission of the Territory as a State and the abolishment of the Territorial government, did not repeal or affect the charter rights and franchises of the University, and,

5. That the Legislature of Indiana could not divest the University corporation of its right to the lands, and confer the lands or their proceeds upon another corporation or body politic.

Upon equity, reason and authority, appellants claim that the reservation to Congress of the right to annul and set aside laws passed by the Legislature and Governor of the Territory of Utah, never was intended

to extend to, and cannot be held to embrace, laws creating private corporations and granting to them corporate rights, powers and franchises, which in their nature constitute contracts between the Government granting such charters and the incorporators accepting them.

That this Church corporation, appellant, is a *private corporation*, is hardly an open question. It is settled law, and has been for over sixty years, that all corporations receiving grants of corporate powers and franchises, not connected with public objects, and not relating to public uses and public interests, are private corporations.

The decisions of this Court, to the effect that such corporations as this church corporation are private corporations, are uniform and numerous.

Trustees of Dartmouth College v. *Woodward*, 4 Wheaton, pp. 629-639.

East Hartford v. *Hartford Bridge Co.*, 10 How., pp. 533-538.

Trustees for Vincennes University v. *State of Indiana*, 14 How., pp. 276, 277.

State Bank of Ohio v. *Knoop*, 16 How,, 380, 381.

Holyoke Co. v. *Lyman*,15 Wall., 511.

Newton v. *Commissioners*, 100 U. S., 557-559.

Railway Co. v. *Philadelphia*, 101 U. S., 539.

Greenwood v. *Freight Co.*, 105 U. S., 20, 21.

"Those charters of incorporation, however, which are granted, not as a part of the machinery of the government, but for the private benefit or purposes of the corporators, stand upon a different footing, and are held to be contracts between the Legislature and the corporators, having for their consideration the liabilities and

duties which the corporators assume by accepting them; and the grant of the franchise can no more be resumed by the Legislature, or its benefits be diminished or impaired without the consent of the grantees, than any other grant of property or valuable thing, unless the right to do so is reserved in the charter itself."

Cooley's Constitutional Limitations, 4th Ed., p. 339, * p. 279.

Morawetz on Private Corporations, 2d Ed., Secs., 3, 4.

In view of the facts admitted by appellee, and found by the Court, appellant's claim, under the authorities above quoted and cited,

1. That the Church corporation is a private corporation.

2. That its charter constituted an unconditional grant in the nature of a contract.

3. That no power to amend or repeal this charter was reserved, either in the charter, or in any other law of the Territtory of Utah.

4. That the Legislature and Governor of the Territory of Utah had full power to grant to this private corporation an irrevocable charter.

5. That even if the right to repeal or annul this charter was reserved by the act of September 9, 1850, still Congress, must in equity be conclusively presumed to have approved the charter, after from seven to ten years having passed without congressional disapproval, during which time the corporation, with full knowledge of Congress, acquired property and vested rights.

6. That even if the right to annul and make void the charter was reserved to Congress, that right did not include, or grant to Congress, the power to *amend or*

limit the charter granted by the Territorial Legislature.

7. That the reservation to Congress of power to annul and render void laws passed by the Legislature and Governor of the Territory of Utah, as set forth in the last clause of the sixth section of the act of Congress of September 9, 1850, was not intended to include, and does not give to Congress, the right or power to annul and set aside, legislative contracts entered into by the Territory of Utah, by granting corporate rights, powers and franchises to private corporations.

Appellants, therefore, claim and insist that the act of Congress, of July 1, 1862, is unconstitutional and void in so far as it purports to annul and repeal the charter of the church corporation, and in so far as it purports to change and limit the right and power of said corporation to acquire and hold real estate without limitation as to the amount or value thereof.

The findings and decree of the Court below that the Church corporation acquired the *legal title* to all the real estate described in the findings *after* the passage of the act of Congress of July 1, 1862, and the utter silence of the decree touching the *equitable title to, and vested rights in*, real estate acquired and held by the Church corporation many *years prior to July 1, 1862*, are very remarkable and astonishing illustrations of the condition of mind of the Court below in hearing and deciding this case. Why should a Court of equity carefully avoid any mention, in its findings and decree, of the equitable title and vested rights held by the Church corporation in the most valuable parts of this real estate for many years prior to July 1, 1862, if the Court desired to make just findings and an equitable decree covering the exact facts of the case?

The statements in the findings, and in the decree, that the legal title to all of the real estate was acquired by the CORPORATION after July 1, 1862, are mere conclusions of law—the expression of the opinion of the Court upon a question of law which the Court did not decide.

If the act of Congress of July 1, 1862, is valid, and if it repealed the charter of the Church corporation, it is very evident that the *corporation never acquired any property, real, personal or mixed, after July 1, 1862.* A defunct corporation cannot acquire property.

But, passing that consideration for the time being, attention is now called to the fact that facts disclosed in the record, and set forth in the findings of the Court, abundantly prove that the Church corporation did acquire and own the equitable title to, and vested rights in, the most valuable parts of the real estate described in the findings, for many years prior to July 1, 1862, and had made valuable and lasting improvements thereon long before the passage of said act of July 1, 1862. Why is it that these equitable titles and vested rights were deemed unworthy of protection by the Court in its decree? These titles and rights are property just as much as warranty deeds, "a vested equitable interest being property in the same sense and entitled to the same protection as a legal." *Cooley's Const. Limitations*, 4th Ed., p. 339, *p. 279. This question has been definitely decided and settled by this Court in cases involving just such equitable title to lands in this same Territory of Utah, and in this same Salt Lake City.

Stringfellow v. *Cain*, 99 U. S., 610.
Hussey v. *Smith*, 99 U. S., 20.

In the first of these cases this Court held that the equitable title and vested right in lands in Salt Lake City, acquired by possession, improvement and occupation, prior to the entry of the land by the Mayor of the city, under the act of Congress of March 2, 1867, constituted such title and property rights as descended to the heirs of the occupant or owner of the possessory title.

In the other case above cited, this Court held that such equitable title was subject to mortgage, and that the foreclosure sale under such mortgage conveyed to the purchaser the right to enforce the conveyance of the legal title.

The same ruling was made by this Court regarding land in Denver, Colorado Territory, in the case of *Cofield* v. *McClellan*, 16 Wall., 331.

The Court below erred in failing to find and decree that the Church corporation owned and held an equitable estate, and vested rights, in all of the real estate occupied, improved and possessed by said corporation, through its Trustees, within the limits of the town site of Salt Lake City, on or prior to July 1, 1862.

PROPOSITION II.

If the act of Congress of July 1, 1862, is finally held by this Court not to be unconstitutional and void in the respects and for the reasons given in the first proposition above set forth, but that the same is constitutional and valid in said respects, then and in that case appellants claim and insist that by the provisions of said act all of the personal property owned by said Church corporation on July 1, 1862, and all the real estate in which said corporation then owned and held vested

rights, and in and to which said corporation owned or held an equitable title or interest, cannot be in law or equity forfeited or escheated to the United States by any legislation subsequent to said act of Congress of July 1, 1862, regardless of the present value of said real estate and personal property; because if said act is valid and constitutional in said respects mentioned in the first proposition above set forth, it must be held that Congress, by said act of July 1, 1862, expressly approved, ratified and confirmed the said charter of said Church corporation, and to have continued the existence of said Church corporation, as then constituted, under the express sanction of Congress; and because, by the express provision of said act of July 1, 1862, all property and all vested rights in property then owned by said corporation are expressly reserved from the operation of said act.

This proposition is self-evident. The act of July 1, 1862, certainly recognized the then existence of the Church corporation. It also clearly recognized that the Church corporation had theretofore legally acquired, and then owned, *property*, otherwise the *proviso* "That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned," would be meaningless and senseless.

If the act of July 1, 1862, is held valid, and if it is further held that it did not repeal the charter of the corporation *in toto*, but that the corporation survived the act, and continued to exist after its passage, it must surely be held that the continued existence of the corporation after July 1, 1862, was under the full approval, sanction and confirmation of Congress.

If this were not true, the *proviso* to the third section of the act, "That existing vested rights in real estate shall not be impaired by the provisions of this section," could have no application to the Church corporation.

If the corporation continued to exist after the passage of the act of July 1, 1862, and if that act is held valid, it certainly confirms the corporation in its right and title to all the property, real and personal, it then held, and prohibits the United States from subjecting that property, or any of it, to forfeiture or confiscation by any subsequent enactment of Congress, regardless of the value of the real estate or personal property, either in 1862 or at any time since the passage of said act. The bill, as has already been shown, admits that the corporation, if it continued in existence after July 1, 1862, had full right and authority to acquire and hold real estate to the value of $50,000, *in addition to all it held or owned when the act of July 1, 1862, took effect, if valid.*

Even if the act of July 1, 1862, be held to be a definite disapproval of the charter of the Church corporation, still all rights and property acquired under the charter *before its disapproval by Congress*, were not, and could not be, impaired by the Congressional disapproval, *regardless of the value of the property at the time of the disapproval of the charter, or at any time since.*

Bogardus v. *Trinity Church*, 4 Sanford's Chancery, Marginal pp. 634, 737, 738.

Harvard College v. *Aldermen of Boston*, 104 Mass., 470, 487–491.

PROPOSITION III.

If it shall be finally held by this Court that the act of Congress of July 1, 1862, is not unconstitutional and

void in the respects and for the reasons stated in the first proposition above set forth, and if it shall further be finally held by this Court that said act did not validate, approve and confirm said charter of said Church corporation, and continue its existence as such corporation under the express sanction of Congress, as claimed and insisted upon in the second proposition above set forth, and if, on the contrary, it is finally held by this Court that said act of Congress of July 1, 1862, annulled and disapproved the ordinance of incorporation incorporating the Church of Jesus Christ of Latter-Day Saints, then and in that case the intervenors, appellants herein, will claim and insist that the said act of Congress of July 1, 1862, by the express terms of the second section thereof, interpreted by and under the findings of fact as found by the Supreme Court of the Territory of Utah in this suit, as the same appear on pages 97 and 98 of the record herein, repealed and rendered null and void the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints. That if said corporation has ever ceased to exist, it ceased to exist and became extinct upon the taking effect of said act of July 1, 1862; and that the Church of Jesus Christ of Latter-Day Saints, existing at the date of the commencement of this suit, has ever since said July 1, 1862, been, and now is, a voluntary religious sect, Church, association or organization, and no property, real, personal or mixed, acquired and held by it in its capacity of a voluntary religious sect, Church or association, can be, either in law or equity, forfeited or escheated to the United States, or to the Territorial Government of Utah, under this proceeding, or any other proceeding, either at law or in equity.

First. Because the law, under which this suit is brought, is limited in express terms to the institution and prosecution of "proceedings to forfeit and escheat to the United States the property of CORPORATIONS obtained or held in violation of Section 3 of the act of Congress approved the 1st day of July, 1862."

Second. Because real estate acquired and held by unincorporated churches, sects, associations or organizations for religions and charitable uses—even although acquired in violation of the third section of the act of Congress of July 1, 1862—could not, in law or equity, be forfeited or escheated to the United States, for the reason that such unincorporated bodies or associations are, in law, partnerships, and it could not be found or held that there is no lawful person or persons in whom said property would vest upon dissolution of such association or co-partnership, and

Third. Because property dedicated to religious and charitable trusts and uses can never escheat to the United States, either by the death or dissolution of the person or association holding the same in trust for such religious and charitable uses and purposes.

This proposition presents for determination the following question, which is necessarily and directly involved in the decision of the case at bar, viz: If the act of July 1, 1862, is valid, what effect did it have upon the charter of the Church corporation?

An answer to this question is necessary, because if

it is held by this Court that the act of July 1, 1862, *repealed the charter of the Church corporation*, then there is no foundation left for this suit, and the decree appealed from, to rest upon.

The act of March 3, 1887, under which this suit is brought, and without which it is plain the suit could not have been instituted and prosecuted, in express terms limits the institution and prosecution of suits under it, to "proceedings to forfeit and escheat to the United States the property of *corporations* obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862."

If the act of July 1, 1862, repealed, annulled and made void the charter of the Church corporation, it certainly follows that the Church corporation has not been in existence since that act took effect.

If the corporation ceased to exist on July 1, 1862, it certainly has not acquired any property since that date, therefore there is no foundation for this suit to rest upon. Did the act of July 1, 1862, repeal the charter? The language of the act is as follows, viz:

"That the following ordinance of the provisional government of the State of Deseret, so-called, namely, 'An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints,' passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January nineteen, in the year eighteen hundred and fifty-one, entitled 'An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,' and all other acts and parts of acts heretofore passed by the

said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield or countenance polygamy be, and the same are, disapproved and annulled."

This language is clear and explicit. It leaves no room for construction or for possible doubt. It is an unconditional repeal of the ordinance granting the charter to the Church corporation. It repeals the charter by its specific name and title. How could Congress ever repeal it, if these words do not constitute a repeal? The use of these words, namely, "and *all other acts* and parts of acts heretofore passed by the said Legislative Assembly of the Territory of Utah *which establish, support, maintain, shield* or countenance polygamy," constitute an affirmative declaration upon the part of Congress that the ordinance chartering the Church corporation did "establish, support, maintain, shield or countenance polygamy," and that it was therefore "disapproved and annulled."

There can be no evading the force and effect of this second section of the act of July 1, 1862, if it is constitutional and valid.

It clearly recognized that the corporation then had a legal and valid existence, and explicitly declared that that legal and valid existence should then cease. The repeal of the charter is absolute and unconditional, unless it is qualified by the *proviso*. Does the *proviso* save the charter and continue the existence of the corporation? Most certainly it does not. The words of the *proviso*, so far as it affects the charter of the Church corporation, are, "*Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordi-

nance heretofore mentioned, nor with the right 'to worship God according to the dictates of conscience.'" No one can claim that these words abrogate the repeal and continue the existence of the corporation. The *proviso* does protect the property rights of the dead corporation acquired while it was living. The law would have done that without the *proviso*. Under the charter the corporation could not hold property in its corporate name, but only in the name of Trustees. The *proviso* simply protected the rights and interests of the members of the corporation, at the time of its extinction, in and to the property then held in trust for their use and benefit by the Trustees of the corporation. The *proviso* does not continue to the corporation *the right to acquire more property*. It continues to it no right, no power, no franchise as a corporation. The *proviso* preserves to the members of the defunct corporation the right "to worship God according to the dictates of conscience." It took no *proviso* to do that. The Constitution of the United States grants and protects that right. The corporation, while living, was an inanimate, artificial being—it could not worship. This part of the *proviso* must, therefore, have referred only to the persons composing the membership of the corporation, and emphasizes the construction above given to the first clause of the *proviso*, namely, that the property rights and interests of the persons composing the corporation at the time of its demise, in the property then held in trust for their benefit by the Trustees of the corporation, should be preserved.

The last clause of the *proviso*, to-wit: "But only to annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy," instead of

qualifying or abrogating the explicit repeal of the charter, intensifies the repeal.

It has already been shown that the language of the second section of the act contains an affirmative declaration that this charter *did* establish, support, maintain, shield or countenance polygamy, and that the repeal was based upon that fact. The Court below has given emphasis to this declaration by Congress, by finding as a fact, that "the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets and practices of the said late Church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy."

It seems impossible to hold that the *proviso* saved the charter and continued the existence of the corporation.

If, therefore, the act of July 1, 1862, is held valid, it would seem that it must be held to be an absolute, unconditional repeal of the charter of the Church corporation.

If the charter was repealed on July 1, 1862, it is certain that *the corporation has not acquired any property since July 1, 1862.* There is, therefore, no foundation for the suit to rest upon, because there is no corporate property acquired since July 1, 1862, upon which to base the action. It can hardly be seriously claimed that suit can be brought in the year 1888 to wind up the affairs of a corporation that ceased to exist in 1862—twenty six years before this suit was brought. But even if suit could be brought to wind up the affairs of the corporation that ceased to exist in 1862, such suit

could only relate to property acquired and held by the corporation at the time its charter was revoked and the franchises were withdrawn. It has already been shown that the act of Congress under which this suit is brought expressly limits the right of action to property acquired and held by corporations since July 1, 1862. If the charter of the Church corporation was repealed on July 1, 1862, that corporation never acquired or obtained any property, real or personal, after July 1, 1862.

The finding by the Court that "John Taylor claimed to hold and continued to exercise the powers conferred upon said Church of Jesus Christ of Latter-Day Saints by said act of incorporation until his death, which occurred on the 25th day of July, A. D. 1887," if true, would not continue the life and legal existence of the corporation in spite of the repeal of its charter by the act of July 1, 1862. That does not even amount to a finding that the corporation, as such, claimed to exist after July 1, 1862.

The repeal of the charter, if the act of July 1, 1862, repealed it, left the people who had composed the membership of the corporation as an unincorporated religious sect, body or association. As such unincorporated association or church they had a perfect right to take or retain the name of the Church of Jesus Christ of Latter-Day Saints. The Court finds that such a church or unincorporated association existed at the time this suit was brought, and that it is composed of the same sect, association or body of people who comprised the membership of the Church corporation while it existed.

It is too plain for argument that any property, real, personal or mixed, acquired by or donated to this unincorporated body or Church, and held by individuals in

trust for the use and benefit of said unincorporated Church, for its religious and charitable uses, cannot be lawfully seized and held by, or forfeited to, the United States Government under either the act of March 3, 1887, or the act of July 1, 1862, or any other law, for several reasons:

1. The act of March 3, 1887, *limits* suits to forfeit and escheat property to the United States expressly to property of "*Corporations* obtained or held in violation of Section 3 of the act of Congress approved the 1st day of July, 1862." Section 3 of the act of July 1, 1862, relates only and solely to *real estate*. It puts no limit on either corporations or unincorporated associations, in respect to the acquirement of *personal property*.

2. Unincorporated bodies or associations are in law partnerships, and nothing more. If such an unincorporated church or association acquired and held by individual Trustees in their names, real estate exceeding $50,000 in value after July 1, 1862, the excess above $50,000 in value could not be forfeited or escheated to the United States, because, the association being a mere co-partnership, the Court could not lawfully find or hold that there is no person or persons in whom said property would vest upon a dissolution of the association or co-partnership.

But, be that as it may, this suit was not brought against the unincorporated Church of Jesus Christ of Latter-Day Saints. It is brought against a *corporation* to subject property *acquired by that corporation after July 1, 1862*, to seizure and confiscation on the ground that said property has been acquired and held in violation of the act of July 1, 1862.

If the charter was repealed July 1, 1862, the cor-

poration named in the bill of complaint has had no existence since that date and has acquired no property.

3. If the property, real and personal, acquired by the unincorporated Church of Jesus Christ of Latter-Day Saints since the corporation of that name ceased to exist by repeal of its charter, was acquired for, and dedicated to, *religious* and charitable uses, it never can escheat to the United States, either by the death or dissolution of the person or association holding the same as Trustee. The law will never permit a religious or charitable trust to lapse and the trust fund escheat for lack of a Trustee. This same statement would be equally true and applicable to the corporation if the Court holds that the Church corporation continued to exist until March 3, 1887.

If the unincorporated sect or body, known as the Church of Jesus Christ of Latter-Day Saints, has at any time since July 1, 1862, acquired property for uses that are neither religious nor charitable, even that fact would not render the property subject to escheat to the United States, either in law or equity.

The act of March 3, 1887, is itself a clear declaration upon the part of Congress that the charter of the Church corporation was repealed *in toto* by the act of July 1, 1862. Section 17 of that act, after describing the ordinance and Territorial acts incorporating the Church corporation, proceeds thus: "So far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved." If these words do not clearly imply that the charter had been repealed, and was regarded as repealed, before the passage of the act

of March 3, 1887, language is powerless to convey such implication.

If the act of July 1, 1862, repealed the charter of the Church corporation, the Court below erred in denying the intervening petition of Romney, Dinwoody, Watson and Clark: the Court also erred in overruling appellants' demurrer to the bill of complaint, and in entering the order appointing a Receiver: the Court also erred in decreeing that the Church corporation was dissolved March 3, 1887.

These errors are presented by the tenth, first, second and third assignments of error, *supra* pp. 33, 35.

PROPOSITION IV.

The act of Congress of March 3, 1887, is unconstitutional and void.

First. Because it seeks and purports to impair, annul and supersede the obligations of a contract executed, accepted and acted under for more than thirty years.

Second. Because, even if Congress did reserve the right to annul and set aside this charter of incorporation, duly and legally granted by the Territorial Legislature, still, after the lapse of over thirty years, during all of which time said incorporators and members of said corporation used, exercised, relied upon and acquired property under the rights and franchises granted by said charter, with the full knowledge of Congress, the full approval, ratification and confirmation of said charter by Congress must in law and equity be conclusively presumed.

Third. Because said act is judicial legislation, by which Congress attempts to usurp and exercise

the powers and functions of the judicial department of the United States Government.

Fourth. Because, if the act of Congress of July 1, 1862, is valid, and if it repealed the charter of said Church corporation, the said act of March 3, 1887, is impotent and nugatory, and has nothing to act upon, there being no corporation to dissolve, and no property or real estate subject to be forfeited or escheated under the provisions of said act.

Fifth. Because, if said Church corporation continued to exist after the act of Congress of July 1, 1862, took effect, it must have so continued to exist by virtue of the fact that, as a corporation, and in its corporate capacity as a "religious and charitable association," it did NOT "establish, support, maintain, shield or countenance polygamy," and if said corporation continued to exist after July 1, 1862, on the ground that it did NOT "establish, support, maintain, shield or countenance polygamy," the real estate—in excess of fifty thousand dollars in value—acquired by it subsequent to the taking effect of the act of July 1, 1862, could not in law or equity be or become forfeited and escheated to the United States, even if acquired in violation of the third section of the said act of July 1, 1862, because said real estate was acquired by a "religious and charitable corporation," and was dedicated and donated to religious and charitable uses and purposes, and the same, with its income, issues and profits, was devoted to and used "for the purpose of dispensing charity."

The authorities and argument submitted in support of the proposition that the act of Congress of July 1, 1862, is unconstitutional and void, *supra*, pages 43 to 69, apply with greater force to the act of March 3, 1887, and contain all that need be said in support of the first and second clauses of this fourth proposition.

If the act of July 1, 1862, did not repeal the charter of the church corporation, it confirmed, approved and sanctioned that charter, or all parts of it which survived. By such confirmation and approval of Congress the United States became a party to the contract made and entered into by the act granting the charter. The proposition that Congress can now, after the lapse of thirty-two years, during which the corporate franchises granted by the charter have been exercised, and property and vested rights have been accumulated, relying upon the charter contract, revoke, annul and render void the charter, and seize and confiscate vast amounts of personal property and real estate, is monstrous and inequitable. If law and equity are the embodiment of reason and conscience, the proposition will find no support in either law or equity.

In the discussion of the third proposition, *supra*, pages 73 to 83, the fourth clause of this fourth proposition has been fully considered.

The third objection to the act of March 3, 1887, as above stated, is that the act is *judicial legislation*, by which Congress attempts to usurp and exercise the powers and functions belonging solely to the judicial department of the Goverment.

The act attempts not only to repeal the charter, and thereby make it possible for the Courts to adjudge a dissolution of the corporation and forfeiture of the fran-

chises upon proper proceedings, but it attempts to judicially adjudge the dissolution of the corporation as a Court, and then proceeds to direct the Courts to seize the property and administer upon the estate of the dissolved corporation under the dictation of Congress. That the Supreme Court of the Territory so understood this law, and understood that the Court had nothing to do with judicially dissolving the corporation, but only had to do with the administration upon the estate of the defunct corporation, is very evident from the language of the decree.

The Court does not decree or adjudge the dissolution of the corporation, but simply decrees that *the corporation had become and was dissolved many months before this suit was brought.* The words of the decree are: "That on the 3d day of March, 1887, the corporation of the Church of Jesus Christ of Latter-Day Saints became and the same was dissolved, and that since said date it has had no legal corporate existence." If this act is not judicial legislation, or an attempt in that direction, what is it? Congress does not submit the questions of dissolution and forfeiture of franchise to any Court, but assumes to pronounce final judgment of dissolution, and then turns the estate of the corporation over to the equity side of the Court for administration and settlement. The claim of solicitors for the United States, urged in the Court below, that this suit, although in form a bill in equity, is in fact a suit in the nature of a *quo warranto*, does not merit consideration. Courts of equity never declare forfeitures. They do not possess that prerogative; it is not within their jurisdiction. *Quo warranto* is a common law action, in which the right to trial by jury is preserved by the Constitution of the United States.

Congress has no judicial power to enter a decree or render a judgment, dissolving this corporation, taking away from it its estate, and turning over the seized estate to a Court of equity for administration and settlement. Yet that is precisely what the act of March 3, 1887, attempts to do. This single consideration of the act ought to end this case by a reversal of the decree appealed from, with a decree of this Court holding the act of March 3, 1887, unconstitutional and void.

The decisions of this Court on this point are clear and decisive.

In *Fletcher* v. *Peck*, 6 Cranch, 136, Mr. Chief Justice Marshall said:

"To the legislature all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public, be in the nature of the legislative power, is well worthy of serious reflection.

"It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments."

In *Terrett* v. *Taylor*, 9 Cranch, 51, 52, Mr. Chief Justice Marshall said:

"A private corporation created by the Legislature may lose its franchises by a misuser or nonuser of them; and they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and it is a tacit condition annexed to the creation of every such corporation. * * * But that the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired

under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

In *Pennsylvania College Cases*, 13 Wall., 212, Mr. Justice Clifford said:

"Charters of private corporations are regarded as executed contracts between the government and the corporators, and the rule is well settled that the Legislature cannot repeal, impair, or alter such a charter against the consent or without the default of the corporation *judicially ascertained and declared*."

In *Davis* v. *Gray*, 16 Wall., 222, 223, Mr. Justice Swayne said:

"All the other conditions prescribed, involving the existence of the corporation, are clearly subsequent. They are found in the fourteenth section of the charter, in the first section of the act of February 5, 1856, and in the third section of the act of February 10, 1858. To any argument drawn from these provisions there are two conclusive answers:

"(1.) There has been no judgment of ouster and dissolution. *Without this they are inoperative.* To make them effectual they must be grasped and wielded by the proper judicial action."

In *Sinking Fund Cases*, 99 U. S., 719, Mr. Chief Justice Waite said:

"They cannot *legislate* back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by *legislation* compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection."

This question of usurpation by Congress of judicial functions is presented for consideration and decision by the 3rd, 5th, 6th, 7th and 11th errors assigned.

The fifth clause of this fourth proposition, *supra*, p. 84, presents a point worthy of careful consideration. The history of Congressional legislation presents no parallel to the acts of July 1, 1862, and March 3, 1887. They constitute a new departure in attempted legislation.

After a religious and charitable corporation has been lawfully created by the Territorial Government of Utah, and has for thirty-six years exercised its franchises and accumulated a valuable estate with the full knowledge of Congress—all of which is true if it is held that the charter survived the act of July 1, 1862—it is now attempted by Congress to pass a law decreeing the dissolution of the corporation, and the seizure and confiscation of over a million dollars worth of its property, acquired, dedicated to, and used for, the support of the Church and its worship, and for dispensation of charity. If this is not a new exercise of legislative power, it would be difficult to describe what would be.

The only ground offered in support of this attempted confiscation and forfeiture is that the Church corporation, in its corporate capacity, maintained,

shielded or countenenced polygamy. But if this Court holds that the corporation continued to exist lawfully under the act of July 1, 1862, it must hold that the corporation, in its corporate capacity, as a "religious and charitable association," did *not* shield or countenance polygamy; for if it was guilty of that wrong, the act of July 1, 1862, certainly repealed the charter, if it is a valid law.

If the corporation has not, in its corporate capacity, been guilty of any wrong, can its real estate be seized, forfeited and escheated to the United States? Suppose it has acquired more than $50,000 worth of real estate since July 1, 1862—all dedicated to religious and charitable uses—will the law permit the religious and charitable trust to fail, and escheat the excess of property to the United States?

PROPOSITION V.

Neither the act of Congress of July 1, 1862, nor the act of Congress of March 3, 1887, warrant or support the seventh paragraph of the decree, by which the Court purports and attempts to confiscate, forfeit and escheat a vast amount of *personal property* to the United States.

First. Because neither of said acts purports to grant to the United States any power or authority to forfeit or escheat any personal property to the United States.

Second. Because, if the act of July 1, 1862, repealed the charter of said Church corporation by reason of the fact that said corporation, in its corporate capacity, did establish, support, maintain, shield or countenance polygamy, then, and in that

case, the personal property now seized and held by the Receiver and by the decree declared confiscated, forfeited and escheated to the United States, never belonged to said Church corporation, but was at the time of the commencement of this suit, and still is, the property of the unincorporated voluntary religious sect, church, association or organization found by the Court to exist and to be now known as the Church of Jesus Christ of Latter-Day Saints, said property being held in trust for said voluntary church, sect, organization or association, by certain individual Trustees in trust as such Trustees, and the same was dedicated to and owned by said voluntary sect, church or association for religious and charitable uses, trusts and purposes, and is not, and never was, subject to escheat or forfeiture.

Third. Because if said Church corporation continued to exist after the act of July 1, 1862, took effect, it must have retained its corporate existence and its corporate rights and franchises by virtue of the fact that it did *not*, as a corporation, and in its corporate capacity, "establish, support, maintain, shield or countenance polygamy."

The Court below finds that there never was any change in the doctrines, principles, practices, teachings and tenets of said Church corporation during its existence as a corporation.

The Court further finds that said corporation was, during its entire existence, "in its nature and by its statute of incorporation, a religious and charitable cor-

poration for the purpose of promulgating, spreading and upholding the principles, practices, teachings and tenets of said Church, and for the purposes of dispensing charity."

The Court further finds that the personal property of the said Church corporation during its existence was used for and devoted to the corporate uses and purposes of said corporation. That is to say, the personal property, as well as the real estate of said corporation, while the same continued to exist as a corporation, was dedicated to and held in trust for religious and charitable uses and purposes.

Now, therefore, it appears certain that even if the act of March 3, 1887, is valid, and if it repealed the charter of said Church corporation, and dissolved the said corporation, it certainly did not repeal the charter and dissolve the corporation *because said corporation did establish, support, maintain, shield or countenance polygamy*, for if said corporation was guilty in that respect, its charter, so far as that matter was concerned, was expressly and in direct terms repealed by the act of July 1, 1862, and said corporation became extinct when that act took effect—twenty-five years before the passage of the act of March 3, 1887.

If, therefore, the Church corporation survived the act of Congress of July 1, 1862, and if the act of March 3, 1887, repealed the charter and dissolved the corporation, such repeal and dissolution must rest wholly upon some other reason than that the Church corporation was, in 1887, maintaining, supporting, shielding or countenancing polygamy.

If, therefore, the Church corporation, while holding its personal property as Trustee in trust of property

dedicated to religious and charitable uses, trusts and purposes, was dissolved and its charter repealed, the repeal of the charter and dissolution of the corporation would not render the personal property so dedicated to religious and charitable uses and purposes subject to escheat and forfeiture. The death of the Trustee of a religious and charitable trust cannot work the forfeiture or escheat of the trust fund. Such a holding would be contrary to all law and abhorrent to all equity.

The acts of Congress upon which this suit is based do not purport to give power or authority to forfeit and escheat any *personal property* to the United States. The bill of complaint makes no averment or claim regarding *personal property*. The prayer of the bill does not ask that any *personal property* may be forfeited or escheated to the United States. Still, the Court below, going clear outside of the bill, and acts under which it was filed, has entered a Chancery decree decreeing that about $750,000 worth of *personal property* "has become escheated to and the property of the United States of America."

The doctrine of escheat proper, *eo nomine*, never had any existence in this country. It was based upon the doctrine of tenure and related of necessity to real property. The theory was that the fee of all realty was in the King, the subject only holding as by a lease from the Crown. Therefore, if there was no holder the land reverted or fell back to the possession of the King. There being no such doctrine of tenure in this country, a doctrine which may perhaps properly be named the doctrine of *parens patriae* has been established. This doctrine applies to both real and personal property. The theory of the doctrine is that the parent government falls heir to all property, real and personal, *for which no*

owner can be found, or in which no person can be found who has a legal or equitable interest. At common law a corporation, of whatever kind, which was wholly dissolved, was considered to be civilly dead and without heirs or persons entitled to the corporate property. The effect was that the lands held by the corporation reverted to the grantor or his heirs, and the debts and choses in action of the corporation, whether owing to it, or owing by it, were extinguished. Thus lands and property given to or held by the corporation for charitable purposes were lost to and diverted from charitable uses.

These results became so disastrous and unjust that the English Courts greatly modified the harsh common law rule. This whole doctrine has, in this country, been generally rejected as to private corporations as having no foundation in reason or justice.

Dillon's Municipal Corporations, Third Ed., Sec. 169.

Some difficulty has been experienced in determining what shall become of the property of purely charitable corporations upon their dissolution. In those cases the donors to the corporation are supposed to part absolutely with the ownership of the donation—whether land or money or personal property. But this Court has settled that question against the doctrine of forfeiture or lapse to the State by holding that such charitable corporations are, in fact, trustees holding the donations in trust for both donors and beneficiaries, and that if the corporation is dissolved, equity will supply a new Trustee, and not permit the donations to be forfeited to or lapse to the State.

In *Dartmouth College* v. *Woodward*, 4 Wheaton, 641, 642, Mr. Chief Justice Marshall said:

"The founders of the college, at least those whose contributions were in money, have parted with the property bestowed upon it, and their representatives have no interest in that property. The donors of land are equally without interest, so long as the corporation shall exist. Could they be found, they are unaffected by any alteration in its constitution, and probably regardless of its form, or even of its existence. * * * These gifts were made, not indeed to make a profit for the donors or their posterity, but for something, in their opinion, of inestimable value; for something which they deemed a full equivalent for the money with which it was purchased. The consideration for which they stipulated, is the perpetual application of the fund to its object, in the mode prescribed by themselves. Their descendants may take no interest in the preservation of this consideration. But in this respect their descendants are not their representatives. They are represented by the corporation. The corporation is the assignee of their rights, stands in their place, and distributes their bounty, as they would themselves have distributed it, had they been immortal. So with respect to the students who are to derive learning from this source. The corporation is a trustee for them also."

Bus there is a clear and wide distinction to be drawn between a *Church corporation, and a purely charitable corporation.*

The corporation now under consideration whose personal property, amounting to $750,000 in value, this decree declares forfeited and escheated to the United States, was incorporated as a CHURCH CORPORATION with full power to transact all business pertaining to the establishment, support and maintenance of the Church.

Its corporate powers included the right to buy and sell real and personal property, and to control, use and manage the real and personal property of the corporation *for profit and gain*, the profits and gains so acquired to be expended in the support of the Church and in defraying its expenses and bestowing its charities.

Its charter made it a *business corporation*, endowed with full power to make pecuniary profits for the benefit of its members in supporting their religious ministrations and providing for the necessities of impoverished and unfortunate members. An examination of the charter will prove the correctness of these statements. (Record, pp. 4, 5.)

In such Church corporations each member has a *continuing interest* in whatever money or property he pays to the corporation as fixed dues, and in whatever money or property he donates to the corporation, because what he pays or donates to his Church goes to his personal benefit in supporting for him the services and ministrations of his religion. If by buying and selling, by general trading or by the growth of flocks and herds the Church corporation makes gains and profits, such gains and profits inure directly to the benefit of every member of the corporation, in that they make his burden of supporting the Church that much lighter than it would be but for the gains and profits made by the corporation. It is true there were no certificates of stock issued by this corporation, but that was by no means necessary in order to preserve for each member an actual interest in the property acquired by the corporation. There are many business corporations that issue no stock and yet the members have an interest in the property and accumulations of

their corporations. This Church corporation, in this regard, is on precisely the same footing in law and equity as that of any business corporation. The distinction between Church and charitable corporations is clearly defined by text writers.

"Religious corporations are those which are formed for the advancement of religion, or the administration of church property for religious purposes. Abbeys and monasteries, in former times, and the various incorporated churches now in existence in the United States, are of this class. The distinguishing feature of charitable corporations is, that they are formed for the administration of charitable trusts, and not for the profit of the corporators themselves; for example, corporations formed for the management of free hospitals and asylums for the relief of the poor, insane, blind, or otherwise helpless. Colleges and academies founded for the administration of private donations are governed by the same principles of law, and are ordinarily classed under the same head. A charitable corporation is merely a trustee or agent selected by the donor of the charity for the purpose of administering funds given for charitable purposes, and the beneficiaries of this trust are frequently the public or parties outside of the corporation. The principles of law applicable to charitable corporations differ, on this account, in many respects, from those which apply to ordinary business corporations."

Morawetz on Private Corporations, Second Ed., Vol. 1, Sec. 4.

This distinction was recognized by the English Courts and text writers at an early day. They held that property donated to a Church corporation did not escheat upon the dissolution of the corporation.

"In this case it was holden by the Court that if a man give lands unto Dean and Canons, and to their successors, and they be dissolved; or unto any other corporations; that the donor shall have back the lands again, for the same is a condition in law annexed to the gift; and in such case no writ of escheat lieth, yet the land is in him in the nature of an escheat. And the principal case was, that a prescription was showed of a discharge of tithes in an Abbot, Prior, and Covent, and that the corporation was afterward dissolved, because all the monks died and the Abbot also. And it was holden by the Court, that he who is now owner of it, and holdeth the lands shall pay tithes: for a lay-man cannot prescribe in *Non decimando:* and the prescription continues no longer then (*than*) the lands continued in the Abbot and Covent's hands. And in this case it was said by Cook, that there are only three manner of escheats: 1. *abjurat regnum;* 2. *Quia suspensus per collum;* 3. *Qui utlagatus.* But because they sued for the treble value in the Spiritual Court, a prohibition was awarded: but the Parson may sue for the double value in the Spiritual Court, and no prohibition will lie, for that is given by the expresse words of the Statute of 2 E., 6, and so it was adjudged in Manwood's case in the Exchequer. And the word (forfeiture) in the Statute doth not give the treble value to the King, but to the Parson himself. Also it was holden by Cook and Warburton, Justices. That if a rent be granted to one and his successors, and the corporation be dissolved, that the rent shall revert to the donor; and there is no difference as to the matter betwixt things which lie in prender and things which lie in render. Nichols, Justice, contrary. That the rent extinguishes in the land itself. And in

the principal case, because they sued in the Spiritual Court for the treble value, a prohibition was granted."

The Dean and Canons of Winsor and Webbs Case, Godbolt, p. 211.

"And it is to be well observed that our author saith, *if he have no heire, &c.*, the lands shall escheate. In which words is implied a diversity (as to escheate) between fee simple absolute, which a natural body hath, and fee simple absolute, which a body politique or corporate hath: For if the land holden of J. S. be given to an abbot and his successors, in this case if the abbot and all the convent die, so that the body politique is dissolved, the donor shall have again the land, and not the lord by escheate. And so if land be given in fee simple to a dean and chapter or to a major and commonalty, and to their successors, and after such body politique or corporate is dissolved the donor shall have again the land, and not the lord by escheate. And the reason and cause of this diversity is, for that in the case of a body politique or incorporate the fee simple is vested in their politique or incorporate capacity created by the policy of man, and therefore the law doth annex the condition in law to every such gift and grant, that if such body politique or incorporate be dissolved, that the donor or grantor shall re-enter, for that the cause of the gift or grant faileth, but no such condition is annexed to the estate in fee simple vested in any man in his natural capacity, but in case when the donor or feoffor reserveth to him a tenure, and then law doth imply a condition in law by way of escheate. Also (as hath been said), no writ of escheate lyeth but in the three cases aforesaid, and not where a body politique or corporate is dissolved."

Coke on Littleton, 13 b.

The doctrine that the property of business corporations, upon their dissolution, goes to the members of the dissolved corporation as owners, by reversion, is well established by the decisions of this Court.

In *Bacon, et al.*, v. *Robertson, et al.*, 18 How., 480, Mr. Justice Campbell said:

"The tendency of the discussions and judgments of the Court of Chancery in Great Britain, and of the courts of this country, is to concede the existence of a distinct and positive right of property in the individuals composing the corporation, in its capital and business. * * * The sentence of forfeiture does not attain the rights of property of the corporators."

In *Greenwood* v. *Freight Co.*, 105 U. S., 19, Mr. Justice Miller said:

"Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the courts may, if the Legislature does not provide some special remedy, enforce such rights by the means within their power. The rights of the shareholders of such a corporation, to their interest in its property, are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights."

If the charter of the Church corporation was repealed by the act of July 1, 1862, it is very evident that the corporation never acquired or owned a dollar's worth of this personal property. It was acquired and owned by the unincorporated body, sect or association known from 1862 to 1887 as the Church of Jesus Christ of Latter-Day Saints, and cannot in law or equity be held as ever belonging to the Church corporation.

If it be held that the corporation survived the act of July 1, 1862, and was finally dissolved by the act of March 3, 1887, then this personal property can not be confiscated and forfeited to the United States, because the persons composing the corporation at the time of its dissolution are in law and equity the owners of the property of the dissolved corporation. They had and held each an individual interest in the property and money of the corporation. It was their agent or trustee while it lasted; upon its death the property belongs to them. The corporation was not simply a Trustee of a charitable trust, it was a business corporation and lawfully accumulated this property for the support of the Church.

But it is claimed that the present Church of Jesus Christ of Latter-Day Saints—which it is admitted comprises the same persons who were members of the corporation while it existed—cannot have this personal property, because if it is delivered to them they will use it for immoral purposes. This is the only ground offered by the Court below in support of this decree confiscating the personal property seized by the Receiver. The absurdity of this position is made apparent by other parts of this same decree. By the third clause of this decree real estate valued at $500,000 is set apart to this same body of persons who were members of the corporation, for their Church buildings, and it is set apart to them *because* they were members of the Church corporation. This is in effect saying to the members of the corporation, you can have $500,000 worth of real estate for Church purposes regardless of the doctrines and tenets of your Church, but you cannot have any of the $750,000 worth of personal property belonging to

your corporation, because you are too immoral to make proper religious and charitable use of it! But when did it become the law that the immoral or even illegal use of property by a person or corporation subjects that property to confiscation and forfeiture?

As a police regulation it may be lawful to seize and *destroy* the tools of the gambler and the burglar, but it is new doctrine that the United States can seize and confiscate and appropriate to its own use a million dollars worth of property simply because its owners might put it to a use "in whole or in part opposed to public policy, good morals, and contrary to the laws of the United States."

This Court in the case of *Mugler* v. *Kansas*, 123 U. S., 623, 669, has in substance decided exactly the opposite doctrine to that advanced by the seventh paragraph of the decree appealed from.

The question presented by this fifth proposition is covered by the twelfth assignment of errors, *supra*, pp. 35, 36, 37.

PROPOSITION VI.

That if both of said acts of Congress shall be finally held to be constitutional and valid, and if it shall be held that any real estate at any time belonging to said corporation can be lawfully forfeited and escheated to the United States by or under any legal proceedings, then and in that case the following named classes of real estate cannot be, or be held, forfeited and escheated to the United States, viz:

First. All real estate in which said Church corporation owned or held vested rights, and in and to which said corporation held any equitable right or title, on July 1, 1862.

Second. Real estate to the value of $50,000 acquired after July 1, 1862.

Note. The bill of complaint admits this claim. Its language in the sixth paragraph is "that of the real estate held by the corporation of the Church of Jesus Christ of Latter-Day Saints, on the 19th day of February, 1887, as set forth in the third paragraph of this bill, *more than fifty thousand dollars in value thereof has been acquired and held since the first day of July, 1862*, which is not held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God or parsonage connected therewith or burial ground."

Third. All real estate held or occupied by said corporation at the date of its dissolution, as buildings and grounds appurtenant thereto, for the purpose of the worship of God, or parsonages connected therewith or burial grounds.

That all of said three classes of real estate ought in law and equity to have been by the decree of the Court set apart to Trustees in trust for the religious and charitable uses of the body, Church, sect or association of individuals composing the membership of said Church corporation:

And that the decree of the Court decreeing that the "Guardo House and grounds" never were used and occupied as a parsonage, is erroneous and in direct conflict with the findings of fact.

The first class of real estate above named includes the four tracts or parcels described, *supra*, pp. 21 to 27. As to three of those tracts there can be no possible question. As to the fourth tract described on pages 25

and 26, *supra*, there ought to be no doubt. The Court finds that the Church corporation had possession continuously from 1856, and improved it by erecting thereon yards and corrals. The Court further finds that the Church Trustee and the Whitneys went into the proper Court and presented their claims to this land, and that "the Court awarded the title to the said premises to Brigham Young, as Trustee, as aforesaid." (Record, p. 96.) The fact that afterwards, in 1872, the corporation paid the Whitneys a consideration for a conveyance and quit-claim to this land, certainly does not prove or tend to prove that the equitable title was not in the corporation when the town site was entered. The decree of the proper Court is conclusive upon that point. Such payments for conveyances for the purpose of final compromise of all dispute and contention are often made, but it never was supposed that by such compromise the possessor admitted the ownership of the persons with whom he compromised, and to whom he paid something for peace.

The second class of realty above mentioned includes $50,000 worth of the real estate acquired after July 1, 1862. The findings of the Court show that the "Church Farm" and the "Summit County" lands were acquired after July 1, 1862. These lands are described in the record on pages 83 to 85. The bill admits that under the act of July 1. 1862, the corporation was authorized to acquire real estate to the amount of $50,000 in value *in addition to the real estate it then held.* It has already been shown, *supra*, p. 73, that this measurement is to be the value of the real estate *when acquired.* Increase in value by growth and improvement of the real estate cannot in law or equity authorize its confiscation now, because it may now be worth more than the limit fixed

by the act. Any other holding would be manifestly unjust. The authorities cited are clear upon this point.

The third class of real estate above named is *parsonage ground.* The real estate claimed by appellants as a parsonage is described, and its history is given, *supra* pp. 27, 28. All the facts there given are copied from the findings of the Court. This property is known as the "Guardo House and grounds." The Court finds that from the time this property was acquired—April 24, 1878—up to the time it was seized by the United States under this proceeding, it was "used and occupied by said John Taylor, President of the Church, as a residence." And yet the Court decrees that this property has never been used as a parsonage.

(Record, p. 99, 4th par. Decree.)

The head of the Church was sometimes called "*President*," and sometimes "Presiding Bishop." This last title appears in the findings on page 95 of the record, while the title of the same officer is given in the findings regarding this property as "President of said Church."

(Record, p. 91.)

To hold that this property was not used as a parsonage is a mere quibble over words, and is an apt illustration of the zeal of the Court below to confiscate much property for the benefit of the United States. Parsonage is the residence of the Parson. The word "Parson" is a technical term of English law. It is a corruption of the word "*persona*," the parson being, as it were, the *persona ecclesiæ,—the representative of the Church in the parish.* That is precisely the position held by the President or Presiding Bishop of this Church, while he occupied the "Guardo House." It was acquired for the residence of the *local head of the Church*, and was so

used and occupied from the day it was acquired until it was taken possession of by the Receiver appointed in this suit.

To hold that it is not in strict legal sense, and in every equitable sense, a parsonage, is to hold against the facts found, against reason and against justice.

PROPOSITION VII.

That if said act of Congress of March 3, 1887, is finally held constitutional and valid, the seventeenth section thereof, wherein it is provided and required that "the Court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by such corporation for places of worship and parsonages connected therewith and burial grounds, and of the description mentioned in the *proviso* to section thirteen of this act, and in section twenty-six of this act, to the respective Trustees mentioned in section twenty-six of this act," is a direct legislative declaration and determination by the Congress of the United States that the teachings, doctrines, tenets and practices of the Church, sect, association or organization now known as the Church of Jesus Christ of Latter-Day Saints are not opposed to public policy and good morals, and are not contrary to the laws of the United States.

And that if said Church, sect, association or organization is competent in law to receive and hold by its Trustees valuable real estate for its religious and charitable uses and purposes in accordance with the "tenets of said sect and body," it is contrary to law, equity and reason to hold, as is held by the decree appealed from, that all of the personal property and estate belonging to

said corporation and dedicated to its religious and charitable uses and purposes is forfeted and escheated to the United States, on the ground that the retention of said personal property by said Church, sect, association or organization, now known as the Church of Jesus Christ of Latter-Day Saints, and the appropriation and dedication thereof by said Church to its religious and charitable uses and purposes, would be opposed to public policy, good morals and contrary to law.

This proposition needs no elaboration, it is self-evident. The act of March 3, 1887, Sec. 17, clearly declares that the people composing the Church corporation while it existed, are good enough to own Church buildings and houses of worship, parsonages and burial grounds, and kindly directs the Court to give to these people such portions of *their own real estate* as were used for such purposes when the act took effect. Now for the Court to find and attempt to decree that the $750,000 worth of personal property acquired and accumulated, *by these same people*, to maintain their Churches and parsonages, support their Church officers, and pay the expenses of their Church ministrations and Church charities, must be forfeited and confiscated to the United States, *because these people are not good enough—are too immoral—to make proper use of it*, is a travesty upon law, equity, reason and common sense.

Will it do to enter upon a system of general confiscation and forfeiture of all Church funds, and of all charitable funds, wherever it can be found that *one out of five* of the Church members, or *one out of five* of the beneficiaries of the charitable fund, is unworthy and

immoral? If that were the law, and if it were strictly enforced, it would soon bankrupt many Churches and close up many charitable institutions and asylums by confiscation of their property and funds. No one can abhor and detest the doctrine and practice of polygamy more than the writer of this brief, but at the same time love of justice, equity and fair dealing, and a firm belief in the rights of property and the protection of all persons in their rights to acquire and use and enjoy their property, compels the severest criticism and strongest condemnation of the high-handed acts of confiscation and spoliation attempted by the act of March 3, 1887, and by the decree appealed from.

If both the act of July 1, 1862, and the act of March 3, 1887, are held unconstitutional and void; or if the act of July 1, 1862, is held valid and it is also held that the Church corporation survived that act and continued in legal existence and possessed of its corporate franchises after the passage of the act of July 1, 1862; and if it is further held that the act of March 3, 1887, is void or inoperative for any reason herein given, or for any reason whatever: Then, in either alternative, the Church corporation has never ceased to exist and has never been stripped of its franchises, but still exists as a corporation and is lawfully and equitably entitled to the possession, use and enjoyment of its property both real and personal. If the corporation still exists, every act of the Court below in this suit and proceeding has been unlawful, wrongful and bitterly oppressive, and the decree in every part thereof should be reversed.

By the act of March 3, 1887, if valid, Congress, and through it, our Government, has entered upon a

new and dangerous departure in legislation and governmental policy, which may well excite the gravest apprehension. It is going back toward the dark ages, rather than advancing toward the light of a higher civilization, to attempt to crush vice and build up morality, by confiscating the property and funds of a sect or Church of one hundred thousand members as a punishment for the errors and moral delinquencies of *one-fifth of its members*.

Proscriptions and confiscations never yet stamped out a heresy, reformed a religious creed, or improved the morals of the victims.

We ask that the decree appealed from may be reversed.

Respectfully submitted,

JOSEPH E. MCDONALD,
JOHN M. BUTLER,
Of Counsel for Appellants.

JAMES O. BROADHEAD,
FRANKLIN S. RICHARDS,
Solicitors for Appellants.

BY
JOHN M. BUTLER.

Indianapolis, Ind., December 29, 1888.

Since this brief was closed we have received the decision of the Court of Appeals of New York, in *People* v. *O'Brien*, N. E. Reporter, Vol. 18, No. 11, 692, holding Statute of N. Y. providing for sale of Broadway Surface Railroad Company's rights, and payment of proceeds to City of N. Y. unconstitutional and void, and holding that upon dissolution of corporation the property and rights became property of the members of the corporation. The case is directly in point in support of the propositions presented in the brief.

Respectfully submitted,

JOHN M. BUTLER.

Dec. 31, 1888.

Stat. Nll 20 Ark 497

Peoples 9 Wend 351

16

Supreme Court of the United States.

OCTOBER TERM, 1888.

The Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al.,
Appellants,
v.
The United States.

No. 1423.

George Romney, Henry Dinwoodey, James Watson, and John Clark,
Appellants,
v.
The United States.

No. 1457.

BRIEF FOR APPELLANTS.

JAMES O. BROADHEAD,
FRANKLIN S. RICHARDS,
For Appellants.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, ET. AL., APPELLANTS, *v.* THE UNITED STATES.	*No.* 1423.
GEORGE ROMNEY, HENRY DINWOODEY, JAMES WATSON, AND JOHN CLARK, APPELLANTS, *v.* THE UNITED STATES.	*No.* 1457.

Appeals from the Supreme Court of Utah Territory.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT.

This is an appeal from a judgment and decree of the Supreme Court of Utah Territory in a suit brought by the

United States against the Church of Jesus Christ of Latter-Day Saints, a corporation created under the laws of Utah Territory, and other persons named in the bill. The action was commenced in the Supreme Court of the Territory of Utah under the provisions of the act of Congress of March 3, 1887, entitled "An Act to amend an Act entitled an Act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes, approved March 22, 1882." The object of the suit, as will be more fully seen hereafter, is to confiscate all the property, both real and personal, belonging to said corporation at the time of the passage of the act referred to, with slight exceptions.

On the 24th day of July, 1847, the Mormon pioneers, who, with their co-religionists, had been driven from Illinois and Missouri, after a long and tedious journey through the wilderness, across the desert, and over the mountains, halted in the Great Salt Lake valley upon territory which then belonged to the Mexican government. The Mormons numbered at that time about twenty thousand souls. They established a provisional government called the State of Deseret. Afterwards, when this territory was acquired by the United States from Mexico by the treaty of Guadaloupe Hidalgo, the Congress of the United States passed a law establishing Utah Territory, defining its boundaries and providing for a territorial government. This territorial government was established in 1850, and Brigham Young was appointed governor by President Fillmore. The Legislature of the State of Deseret, before the establishment of the territorial government, passed an ordinance incorporating the Church of Jesus Christ of Latter-Day Saints. This corporate name was the name by which the members of the Mormon church had for a long time been designated, and the act

of incorporation embraced all that portion of the inhabitants of the State of Deseret who were members of what had been known and was then called the Church of Jesus Christ of Latter Day-Saints. The corporation was vested with the ordinary corporate powers to sue and be sued, defend and be defended in all courts of law and equity, and with certain other franchises, among which was the power to hold and acquire real and personal property for the objects and purposes provided in the charter, without any special limit as to the amount of property which might be acquired or held. The charter authorized the church or religious society to elect a trustee and twelve assistant trustees to receive, hold, buy, sell, manage, use and control the real and personal property of the church; to receive real and personal property by gift, donation or bequest, to be used, managed or disposed of for the benefit, improvement, and erection of houses for public worship and instruction, and the well-being of said church. The charter recognized the right of the church, in common with all civil and religious communities, to worship God according to the dictates of conscience, to solemnize marriage compatible with the laws of Jesus Christ, and to enjoy continually the power and authority to originate, make, pass and establish rules, regulations, ordinances, laws, customs and criterions for the good order, safety, government, convenience, comfort and control of the church, and for the punishment or forgiveness of all offenses relative to church government: *Provided*, "That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices or performances support virtue and increase morality,

and are not inconsistent with or repugnant to the Constitution of the United States or of this State."

The corporation was by its terms purely a religious and charitable corporation, and the purposes for which property might be acquired are necessarily confined to those objects.

In 1851 the Legislature of the Territory of Utah adopted the ordinance creating this corporation, and in 1855 it confirmed and validated the same. The corporation continued to exercise its corporate powers and franchises until the 3d of March, 1887, a period of more than thirty years from the last act of confirmation, and thirty-six years from the act of incorporation, when the Congress of the United States passed an act which was not approved by the President, but became a law by reason of his failure to return it within the ten days provided by the Constitution, by which it was declared that the act of the Legislative Assembly of the Territory of Utah and the ordinances of the State of Deseret creating the corporation known as the Church of Jesus Christ of Latter-Day Saints were disapproved and annulled, and "said corporation, in so far as it may have or pretend to have any legal existence, is hereby dissolved."

In view of the issues raised in this case it is important that the Court should understand the provisions of certain acts of Congress passed since the creation of this corporation, which are therefore quoted:

ANTI-POLYGAMY LAW OF JULY 1, 1862.

"AN ACT to punish and prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every person having a husband or wife living

who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso of this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars and by imprisonment for a term not exceeding five years: *Provided, nevertheless*, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living, nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court, nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

" SECTION 2. *And be it further enacted*, That the following ordinance of the provisional government of the State of Deseret, so called, namely, ' An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints passed February 8th, in the year 1851, and adopted, re-enacted and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January 19, in the year 1855, entitled an act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,' and all other acts and parts of acts heretofore passed by said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield, or *countenance* polygamy, be, and the same hereby are, disapproved and annulled: *Provided, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right to worship God according to the dictates of conscience, but only to annul the acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations or other contrivances.*

"SECTION 3. *And be it further enacted*, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act, shall be forfeited and escheat to the United States: *Provided, That existing vested rights in real estate shall not be impaired by the provisions of this section.*"

An act of Congress approved March 22, 1882, commonly called the "Edmunds Act," created the offense of unlawful cohabitation, and provided that any male person in the Territory who should cohabit with more than one woman should be deemed guilty of a misdemeanor, and, on conviction thereof, punished by fine and imprisonment.

It provided further that the issue of bigamous or polygamous marriages born before the first day of January, 1883, should be legitimated.

It provided that no polygamist, bigamist, or any person cohabiting with more than one woman, should be entitled to vote at any election held in the Territory, or be eligible for election or appointment to, or entitled to hold, any office or place of public trust, honor or emolument in said Territory or in the United States.

It provided for the appointment of a board of commissioners to superintend the registration and election of officers of every description in the Territory, and disapproved certain provisions of previous acts on the subject passed by the Territorial Legislature. The members of that board were to be appointed by the President of the United States. The board was vested with power to canvass the returns at all territorial elections for members of the Legislative Assembly and give certificates of election to

those who, in their opinion, had been lawfully elected, which certificates should be the only evidence of the right of such persons to sit in the Assembly. The act, however, provided that the Board of Commissioners should not exclude any person, otherwise eligible to vote, from voting, on account of his *opinions* upon the subject of bigamy or polygamy, and it reserved to each house of the Legislative Assembly, after its organization, the power to decide upon the election and qualifications of its members.

The act of Congress of March 3, 1887, under the provisions of which this suit was instituted, is more extensive in its provisions, and takes away nearly all of what little was left of the right of local self-government in the people of Utah. This act is entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy and for other purposes,' approved March 22, 1882," but is usually known as the "Edmunds-Tucker Law," so named by way of giving immortality to its distinguished authors.

The act provides that the husband may be a witness against the wife and the wife against the husband in prosecutions for bigamy, polygamy, and unlawful cohabitation.

It provides that in such prosecutions attachments may be issued for a witness without a previous subpœna, compelling his immediate attendance, upon information that there is reasonable ground to believe that the witness would fail to obey a subpœna.

It provides that United States Marshals appointed for the Territory, and their deputies, shall have the same power as sheriffs and constables and their deputies, as peace officers in executing the laws of the United States as well as the territorial laws. It gives them authority to quell and suppress assaults, batteries, riots, routs, affrays and insurrections.

It annuls all territorial laws which recognize the capacity of illegitimate children to inherit, and declares that no illegitimate child shall hereafter be entitled to inherit from his or her father, or to receive any distributive portion of his estate: *Provided*, That this shall not apply to an illegitimate child born within twelve months after the passage of the act.

It takes away a large portion of the jurisdiction heretofore vested in the probate courts of the Territory, and vests such jurisdiction in the district courts, the judges of which are appointed by the President of the United States.

It attempts to dissolve the corporation called the Perpetual Emigrating Fund Company, which had been in existence for about thirty years, and provides that the property and estates of said corporation, in excess of its debts, shall escheat to the United States and be disposed of by the Secretary of the Interior, under the direction of the President, for the benefit of common schools in the Territory.

It abolishes female suffrage, which had been established by an act of the Territorial Legislature fifteen years before.

It provides that the then existing election districts and apportionments of representation for members of the Legislative Assembly of the Territory should be abolished, and gives power to the Board of Commissioners, appointed by the President under the act of March 22, 1882, to re-district the Territory and apportion the representation.

It provides a test oath, as a condition precedent to the right of an applicant to register or vote at any election in the Territory, to the effect that he will support the Constitution of the United States and faithfully obey the laws, and especially that he will obey the provision of the Edmunds Act, and will also obey the provisions of the

Edmunds-Tucker Act in respect of the crimes in said act defined and forbidden, and that he will not directly or indirectly aid, abet, counsel or advise any other person to commit any of said crimes.

And it provides further that, as a condition precedent to the right to hold office under the Territory, the officer before entering upon the duties of his office shall take an oath or affirmation that he will support the Constitution of the United States and obey the laws thereof, and will especially obey the acts above referred to, and particularly the provisions in respect to the crimes in said acts defined and forbidden, and that he will not directly or indirectly aid, abet, counsel or advise any other person to commit any of said crimes.

All grand and petit jurors in the Territory are required to take the oath above referred to, and no person is entitled to vote at any election, or is capable of jury service, or of holding an office of trust or emolument in the Territory, who shall not have taken such oath.

It provides further, that no person who shall be a polygamist, or who shall associate or cohabit polygamously with persons of the other sex, shall be entitled to vote at any election in the Territory, or be capable of jury service, or of holding any office of trust or emolument in the Territory.

This act of Congress abolishes the office of Territorial Superintendent of District Schools, created by the laws of the Territory, and gives the power to the Supreme Court of the Territory to appoint a Commissioner of Schools, who is authorized to possess and exercise all the powers and duties heretofore imposed by the laws of the Territory upon the Territorial Superintendent of District Schools.

It provides further, that the Attorney-General shall institute proceedings to forfeit and escheat to the United

States all property acquired in violation of the act of 1862 above quoted, and that the proceeds shall be applied to the benefit of common schools in the Territory.

And, finally, it provides that the corporation known as the Church of Jesus Christ of Latter-Day Saints shall be dissolved, and makes it the duty of the Attorney-General to cause such proceedings to be taken in the Supreme Court of the Territory as shall be proper to execute the provisions of that section and "*to wind up the affairs of the corporation in conformity to law.*"

It gives to the Territorial Supreme Court, in this respect, the powers of a court of equity, and provides that said court may authorize the transfer of such property held and used by the corporation for places of worship and parsonages connected therewith, and burial-grounds, to trustees, to hold the same for the erection or use of houses of worship, parsonages or burial-grounds, as shall be necessary for the use of the congregations of the religious society, sect or congregation known as the Church of Jesus Christ of Latter-Day Saints.

EDMUNDS-TUCKER ACT OF MARCH 3, 1887.

"AN ACT to amend an act entitled 'An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two.

"SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled 'An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah,' or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and

all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building or the grounds appurtenant thereto which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial-ground shall be forfeited.

"SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints and the ordinance of the so-called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power and it shall be its duty to made such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial-grounds, and of the description mentioned in the proviso to section thirteen of this act, and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.

"SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect or congregation, so much real property

for the erection or use of houses of worship and for such parsonages and burial-grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation."

Admissions Made by the Bill of Complaint.

The bill of complaint brought by the United States, admits:

First. That on February 8, 1851, the General Assembly of the Provisional Government of the so-called State of Deseret, which was afterwards organized as the Territory of Utah, passed an ordinance incorporating as a corporation the Church of Jesus Christ of Latter-Day Saints, which ordinance of incorporation was afterwards, on January 19, 1855, re-enacted by the Legislature and approved by the Governor of the Territory of Utah.

Record, pp. 1, 4, 5, 6.

Second. That under and by virtue of said act of incorporation, the Church of Jesus Christ of Latter-Day Saints was created a corporation, and became and was duly and lawfully incorporated, and was endowed with the powers and franchises granted by said act of incorporation.

Record, p. 2.

Third. That said corporation, appellant herein, was legally authorized and empowered by said act of incorporation to acquire, occupy, hold, and possess real and personal property without limitation as to amount or value.

Record, p. 2.

Fourth. That under and by virtue of said act of incorporation said appellant corporation did buy, receive, ac-

quire, and hold large amounts of real and personal property of great value in the Territory of Utah.

Record, p. 2.

Fifth. That the corporation of the Church of Jesus Christ of Latter-Day Saints, from its organization until the 19th day of February, 1887, was a corporation or association for religious or charitable purposes.

CLAIMS AND CHARGES PREFERRED BY THE BILL OF COMPLAINT.

The United States, by the bill of complaint, asserts the following claims and charges:

First. By the sixth, fourth and seventh paragraphs of the bill, the United States claims that all *real estate* purchased, received or acquired by the appellant corporation subsequent to the enactment of the third section of the act of Congress of July 1, 1862, over, and in excess of, fifty thousand dollars in value thereof, *was and is subject to escheat to the United States*,—excepting only such real estate acquired by the appellant corporation after July 1, 1862, as was on Feburary 19, 1887, held or occupied as a building or ground apurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial-ground.

Record, p. 2.

NOTE.—It will be observed that the United States does not in these paragraphs of the bill assert or claim any right to escheat or forfeit any real estate acquired, possessed and held by the appellant corporation *before the enactment of the third section of the act of Congress of July* 1, 1862. On the contrary, the bill by these paragraphs virtually admits that all real estate acquired by the appellant corporation prior

to July 1, 1862, regardless of the value thereof, is not subject to escheat to the United States.

Second. By the eighth paragraph of the bill the United States avers and claims:

"That on the 19th day of February, 1887, the charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints was disapproved, repealed, and annulled by the Congress of the United States, and the said corporation was thereby dissolved, and *all* the REAL ESTATE owned and occupied by it IN EXCESS OF FIFTY THOUSAND DOLLARS, *which was not, on the 19th day of February*, 1887, *held and occupied as a building, or ground appurtenant thereto, for the purpose of the worship of God, or parsonage connected therewith, or burial-ground*, was subjected to escheat to the United States."

Record, pp. 2, 3.

NOTE.—It will be observed that this claim excepts and exempts two classes of real estate from becoming subject to escheat to the United States under the act of Congress of March 3, 1887, viz:

1. Real estate to the amount of fifty thousand dollars in value.

2. Real estate held and occupied for the purpose of the worship of God, or for a parsonage, or for burial-ground.

The United States virtually admits by the language of the bill above quoted that these two classes of real estate are not subject to escheat to the United States.

Third. By the bill it is further claimed by the United States: That appellants wrongfully, and in violation of law, still claim to hold and exercise the powers heretofore held and exercised by said corporation, appellant herein, and are unlawfully possessing and using the *real estate* acquired

subsequent to the 1st day of July, 1862, and the rents, issues and profits thereof; and that since February 19, 1887, there has been and is no person lawfully authorized to take charge of, manage, preserve or control the property, real and personal, which on or before February 19, 1887, was held, owned, possessed and used by the said corporation appellant herein, and that by reason thereof all of said property, real and personal, is subject to irreparable and irremediable loss and destruction.

Record, p. 3, pars. 9, 10.

NOTE.—The contradictory averments of the bill are made very apparent by these last averments. The ninth paragraph of the bill only claims that the appellant corporation is unlawfully possessing and using the real estate "referred to in the fourth paragraph of this bill." The fourth paragraph of the bill, as has already been shown, only refers to real estate purchased, received, acquired and held "*after the 1st day of July*, 1862."

By the sixth and eighth paragraphs of the bill it is admitted by the United States that three classes of real estate owned and possessed by the corporation, appellant herein, were lawfully and rightfully owned and held by it on February 19, 1887, and were not made subject to escheat to the United States, either by the act of Congress of July 1, 1862, or by the act of Congress of March 3, 1887, viz:

1. All real estate acquired by the corporation, appellant herein, prior to July 1, 1862.

2. Real estate to the amount of fifty thousand dollars in value acquired subsequent to the enactment of the act of July 1, 1862.

3. All real estate held and occupied for the pur-

pose of the worship of God, for parsonage, and for burial-ground. Yet in the tenth paragraph of the bill it is claimed that all of the real and personal property of the appellant corporation is without lawful owner or possessor, and should, therefore, be seized by the United States and placed in charge of a receiver.

PRAYER OF BILL.

First. That a receiver may be appointed, and that said corporation, appellant herein, and its officers and agents, may be ordered and required to surrender and deliver up to such receiver all of the assets, property and effects, and the possession of the real estate belonging to said corporation, and also all moneys, notes, drafts, bills of exchange, checks or other evidences of indebtedness due and owing to said corporation, as well as all books of accounts, deeds, bonds, mortgages, certificates of stock and papers of every nature belonging to said corporation; and that said receiver may continue in the possession and management thereof until sale or other disposition can be made thereof, according to law, under and by virtue of the order of the Court.

Second. That a decree be made declaring the dissolution and annulment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints.

Third. That a Commissioner be appointed to select and set apart out of the real estate held and occupied by said corporation, such real estate as may be lawfully held for religious uses out of the real estate heretofore held by said corporation.

Fourth. That such orders may be made from time to time as may be just and equitable, to wind up the affairs of said corporation conformably to law and equity.

Fifth. For such other and further relief in the premises as the nature of the case may require, and as may seem just and meet and according to equity and good conscience.

Record, pp. 3, 4.

The foregoing analysis of the bill of complaint clearly shows that the broadest possible construction of the averments of the bill utterly fail to support or warrant the order appointing a receiver, and the final decree rendered by the Supreme Court of the Territory of Utah upon that bill.

The bill admits the lawful creation of the corporation, appellant herein; its continuance as such lawful corporation for over thirty-six years; that during all those thirty-six years it was and continued to be a corporation "*for religious and charitable purposes;*" that under its charter and the lawful exercise of its franchise rights it acquired vested rights in real estate and accumulated personal and real estate of great value, and that from the date of its creation up to February 19, 1887, it rightfully and lawfully possessed, held and used the real and personal property acquired and owned by it.

The bill contains no charge or averment that the corporation, appellant herein, ever used, applied or appropriated any of its personal or real property, or any of the proceeds, rents, issues or profits thereof, to any other than "religious or charitable purposes."

It contains no charge or averment of any wrongful, or *ultra vires*, act of the appellant corporation or its trustees, excepting only that it acquired real estate exceeding the amount of fifty thousand dollars in value after the enactment of the act of Congress of July 1, 1862.

It asserts no claim whatever in behalf of the United States to the personal property belonging to the appellant corporation.

It contains no charge or averment that the charter of the corporation, appellant herein, or any act of Congress, limited or attempted to limit the amount or value of the personal property that might be acquired and held by said corporation.

It asserts no claim that either the act of Congress of July 1, 1862, or the act of Congress of March 3, 1887, or any other law, gives to the United States the right or power to seize, confiscate, forfeit or escheat the personal property of the corporation, appellant herein.

The prayer of the bill does not ask that any personal property may be decreed subject to escheat or forfeiture.

The entire bill is based solely upon the claim that the act of Congress of March 3, 1887, not only dissolved the corporation, appellant herein, without giving it a day in court, but also pronounced final judgment of escheat and forfeiture of all the property of the corporation, both real and personal, and that all that is left for the courts to do is to seize the property, set apart a little of the real estate for church uses, and turn over all of the personal and the remainder of the real estate to the United States as escheated property.

To this bill appellants filed a demurrer.

Record, pp. 7, 8.

Pending the demurrer, the United States pressed its motion for the appointment of a receiver. The court sustained the motion, and entered an order appointing a receiver, and requiring the appellant corporation, and its trustees, officers and agents, to surrender and deliver to such receiver all of its property—real, personal, and mixed, of every nature, kind and description whatsoever.

Record, pp. 9, 10.

The opinion of the Court in deciding the motion for the appointment of a receiver appears in the record.

Record, pp. 13–26.

A single sentence of the opinion shows that the Court below held that the act of Congress of March 3, 1887, not only repealed the charter of the appellant corporation, but also judicially pronounced judgment of dissolution of the corporation, leaving nothing for the Court to do but simply to seize and distribute the estate of the dead corporation as directed by said act of Congress. The Court says:

"The power of Congress to dissolve the corporation styled the Church of Jesus Christ of Latter-Day Saints necessarily follows the right to annul its charter, which we have held could be done."

Record, p. 21.

William B. Preston, Robert T. Burton, and John R. Winder were made defendants and filed their demurrer to the bill; whereupon the court overruled both demurrers filed by defendants below and appellants in this Court.

Record, pp. 10, 11, 12.

Appellants' Answers to the Bill.

The appellants filed answers to the bill, averring:

1. The due and lawful creation of the corporation of the Church of Jesus Christ of Latter-Day Saints, and setting out the ordinance of incorporation.

2. That said corporation never acquired or owned any real or personal property in its corporate name, but that it did, under the powers expressly granted by its charter, acquire and hold both real and personal property in the name of a trustee in trust for said corporation.

3. That it was at the time of its creation, ever since has

been, and still is, a corporation or association for religious or charitable purposes.

4. That the act of Congress of July 1, 1862, and the act of Congress of March 3, 1887, in so far as they attempt or pretend to dissolve the said corporation, or interfere with, or limit its right to hold property, or to escheat or forfeit its property, or wind up its affairs, were and are unconstitutional, invalid, and void.

5. That the charter of said corporation constitutes a contract between the Territory of Utah and the United States, on the one part, and the incorporators and members of the said corporation, on the other part, which contract, by the acceptance of said charter by the incorporators, became and is an executed contract. That said corporation, relying upon its charter as a contract, has, in good faith, acquired and owns valuable real and personal property, and that the United States has not now, and never has had, the power or right to repeal or annul the said charter of said corporation, or to dissolve the said corporation.

6. Setting out by description the three several tracts of real estate owned by said corporation and held in trust for it on the 3d day of March, 1887.

7. That it held and owned, possessed and occupied two of said pieces of real estate long prior to the enactment of the act of Congress of July 1, 1862, and that the third tract of real estate was continuously from the time it was acquired—nine years before the institution of this suit—used and occupied solely and only as parsonage property, and that the same was and is necessary for the convenience and use of the congregation, church, or religious society using the same as its parsonage.

8. That in obedience to the requirements of the 26th section of the act of Congress of March 3, 1887, said

corporation applied to the Probate Court of Salt Lake county, in the Territory of Utah, for the appointment of three trustees to take the title to and have and hold the said three tracts of real estate then owned by, and held in trust for, said corporation.

That on the 19th day of May, 1887, said Court did appoint William B. Preston, Robert T. Burton and John R. Winder as trustees to take title to and hold said three tracts of real estate. That the said three tracts of real estate—excepting part of one tract omitted by mistake of the draftsman of said deeds—were conveyed by the trustees in trust for said corporation to the said three trustees appointed by the Probate Court, and making the deeds exhibits to the answer.

9. Denying that the charter of said corporation was repealed and annulled on February 19, 1887, as averred in the bill, and averring that even if the said act of Congress was and is valid, nevertheless the same did not go into force and take effect until the third day of March, 1887. And further averring:

That said corporation, as it lawfully might, acquired and held, from time to time, certain personal property, goods and chattels, all of which it had acquired, held and used solely and only for charitable and religious uses and purposes; that on February 28, 1887, it still owned and held certain of such personal property, goods and chattels, donated to it by the members of said church and friends thereof, solely and only for use and distribution for charitable and religious purposes.

That all of such personal property was, from the creation of said corporation, at all times held, not in the corporate name of said corporation, but in the name of a trustee in trust.

That on February 28, 1887, John Taylor, who then

held all of the personal property, moneys, stocks and bonds belonging to said corporation, as the trustee in trust for said corporation, did, by a certain instrument in writing, set forth as "Exhibit H" to said answer, by and with the consent and approval of said corporation, convey all of said personal property, moneys, stocks and bonds so held by him as trustee in trust for said corporation, after reserving sufficient of said moneys and stocks to pay the then existing debts of said corporation to certain ecclesiastical corporations created and existing under and by virtue of the laws of the Territory of Utah, to be by said ecclesiastical corporations devoted solely and only to charitable and religious uses and purposes. And that pursuant to said written instrument of conveyance, the said Taylor, as trustee in trust for said corporation, did, prior to March 3, 1887, deliver said personal property, goods, and chattels to said several church corporations, as mentioned and scheduled in "Exhibit H," filed with and made part of said answer.

The answers of the other defendants, in so far as applicable, adopt the joint and several answer of the appellant corporation and its trustees.

Record, pp. 27–55.

By an agreed statement of facts filed by the parties in the court below for the purpose of avoiding the long delay that would be occasioned by the taking of evidence, the appellants agreed that said personal property was not actually delivered to said ecclesiastical corporations named in "Exhibit H," but that the same was in the possession of William B. Preston, as trustee in trust, at the time of the commencement of this suit.

Angus M. Cannon, Theodore McKean, Francis Armstrong and Jesse W. Fox, Jr., were made defendants in

the court below and filed their answers. The United States filed general replications to the several answers filed to the bill.

Record, pp. 55–63.

PETITIONS TO SET ASIDE REAL ESTATE.

Preston, Burton and Winder, the trustees appointed by the Probate Court of Salt Lake county, Territory of Utah, pursuant to the 26th section of the act of Congress of March 3, 1887, filed their petition asking the Court that the premises therein described be set apart as a parsonage, averring that they already held legal title to part of said tract, and that Theodore McKean held legal title to a small part of said tract. This is the tract omitted by mistake as set out in the fourth paragraph of the answer of the appellant corporation (see Record, p. 30), and averring that said premises were held in trust by said Preston, Burton and Winder, for the use and benefit of the president of that body of religious worshippers known as and called the Church of Jesus Christ of Latter-Day Saints, as a parsonage, and that the president of said church has made his home and residence thereon ever since the year 1878.

Record, pp. 63, 64.

The United States filed answer to this petition, averring that the deed under which Preston, Burton and Winder claimed title to said real estate was and is wholly void for want of power in the persons named therein as grantors to make the same, and denying that said property is, or ever has been, a parsonage.

Record, p. 65.

Preston, Burton and Winder, trustees appointed by the Probate Court of Salt Lake county, pursuant to the 26th

section of the act of Congress of March 3, 1887, filed two other petitions. One to set apart to said trustees for the Church of Jesus Christ of Latter-Day Saints a certain tract of real estate in Salt Lake City known as the "Tithing Office property," averring that said real estate was taken possession of by said church in the year 1848, when Salt Lake City was first laid out and surveyed, and ever since has been, and still is, used and occupied by said church; that, prior to July 1, 1862, buildings and improvements of the value of several thousand dollars had been built thereon by said church; and that it had acquired a vested right to and interest in said property before July 1, 1862, and was entitled to own and possess the same.

The other petition asked to set apart to said trustees block 87 in Salt Lake City, known as "Temple Block," averring that said real estate has been in the possession of said church and used by it ever since the year 1848; that there are on said block three large buildings, two completed and the third in course of construction, but nearing completion; that said buildings have been, and are being, constructed by said church exclusively for religious purposes, and that the same have been and are used exclusively for the worship of God, and that the whole of said block is appurtenant to said buildings. In both petitions said trustees aver that they now hold the legal title to said two tracts of real estate. The deeds to them conveying these two tracts are set forth in the answer of the corporation, appellant herein, as Exhibits "E" and "F."

Record, pp. 67, 69.

The United States answered these petitions, averring that the deeds to said Preston, Burton and Winder were,

and are, void for want of power in the grantors to make the same, and denying that the said church had a vested right to, or interest in, the "Tithing Office property" prior to July 1, 1862.

Record, pp. 68, 70.

Intervention of Church Members.

On October 8, 1888, George Romney, Henry Dinwoody, James Watson and John Clark, by leave of court, filed a petition in behalf of themselves and all of the members of the Church of Jesus Christ of Latter-Day Saints. In the petition they aver that the members of said church number more than one hundred thousand; that they cannot all, without oppressive delay, be brought before the court; that all of said members have an interest in common with petitioners in the subject of said petitions and in the questions involved in the suit.

The petition then recites the appointment of the receiver, and describes and schedules all of the real estate and personal property seized, taken possession of, and now held by said receiver. The petition then avers:

That petitioners and others, for whose benefit the petition is filed, are members of said church residing in the Territory of Utah; that said church is, and for many years past has been, a voluntary religious society or association, organized and existing in said Territory, for religious and charitable purposes; that said church became possessed of all of said real and personal property in said petition described and mentioned, by the voluntary contributions, donations and dedications of its members, to be held, managed and applied to the use of said church, for the maintenance of its religion and charities, by trustees appointed by said members, semi-an-

nually, at the General Conference of said members; that John Taylor, the late trustee so appointed, died on July 25, 1887, and since his death no trustee has been appointed; that said property is being wrongfully withheld and diverted by said receiver from the purposes for which it was donated, dedicated and granted; that said petitioners and the said members of said church, on whose behalf said petition is filed, are equitably the owners of said property and beneficially interested therein, and are interested to prevent the diversion thereof from said religious and charitable purposes. The prayer of the petition is that, if upon final hearing the church corporation be held and decreed dissolved, then, and in that case, a decree may be rendered decreeing:

1. That the said property belongs to the individual members of said church, and that they are authorized to appoint a trustee or trustees to hold, manage and apply such property and money to the purposes for which it was originally given.

2. That the receiver appointed by the court deliver the possession of said property and its proceeds and income to such trustee or trustees as may be named or appointed at a General Conference of the members of said church.

3. For such other and further relief as may be just and equitable.

Record, pp. 71–76.

The United States filed answer to this petition, in which it is averred:

1. It is denied that petitioners and members of the church—whether a voluntary religious sect or a corporation—have any interest whatever in the property named in the petition.

2. It admits the appointment of the receiver, and that

said receiver now holds the property, real and personal, set out in said petition, but denies that the property when seized was the property of the Church of Jesus Christ of Latter-Day Saints, whether said church be regarded as a corporation, or only as a voluntary religious sect.

3. It admits that all of said property belonged to the corporation of the Church of Jesus Christ of Latter-Day Saints *prior to the dissolution of said corporation.*

4. It avers that "up to the 19th day of February, 1887, said Church of Jesus Christ of Latter-Day Saints existed as a corporation for religious purposes;" that on said 19th day of February, 1887, "said corporation became dissolved;" and that "since said dissolution there has been no legal owner of said property or successor in trust to said corporation, except the United States of America."

5. It denies that said church corporation acquired said property by voluntary contributions, donations and dedications of its members, but claims that all of the real estate and a large part of the personal property was acquired by purchase.

6. It denies that petitioners or any other persons are equitably or otherwise the owners of said property, or any portion thereof, or beneficially interested therein.

7. It avers the creation of the church corporation and its continuance as a corporation up to February 19, 1887; recites the passage of the acts of Congress of July 1, 1862, and March 3, 1887, and avers that by said last named act "the said corporation of the Church of Jesus Christ of Latter-Day Saints became and was a defunct and dissolved corporation."

8. It avers that proceedings are pending, by way of information, against all of the real property named in the petition, for the purpose of having the same declared forfeited and escheated to the United States, and that "*by*

operation of law the said personalty and all thereof has become escheated to the United States of America."

9. It avers that "since the dissolution of said corporation there has existed a voluntary unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints, which comprises the great body of individuals formerly constituting the membership of said corporation;" that said church corporation "was in its nature and by its statute of incorporation a religious corporation for the purpose of promulgating, spreading and upholding the principles and practices, teachings and tenets of said church;" and that the voluntary religious sect now composed of the former members of said corporation hold principles, doctrines, teachings and tenets "substantially the same as those of said corporation," and that if the property mentioned in said petition were delivered to the church composed of the individuals formerly comprising the members of said church corporation, the same would be devoted to illegal and immoral uses.

Record, pp. 76–81.

NOTE.—The Court cannot fail to observe that by this answer, even more clearly than by the bill, the United States bottoms its entire case upon the theory and assumption that Congress by the act of March 3, 1887, legislatively repealed the charter of the corporation, appellant herein, and judicially pronounced judgment of dissolution of the corporation, and that all the property, real and personal, of the dissolved corporation had become and was forfeited and escheated to the United States without the aid of any court.

Under the averments of this answer all that the Court had to do or could do was to seize the property as the agent of the United States and distribute it under the dictation of Congress.

If this is law, the announcement thereof will astonish the world.

FINDINGS OF FACT BY THE COURT.

By the decisions of this Court rendered in *Stringfellow* v. *Cain*, 99 U. S., 610, *Hecht* v. *Boughton*, 105 U. S., 236, and *Ellers* v. *Boatman*, 111 U. S., 357, the findings of fact made by the Supreme Court of the Territory of Utah are conclusive on this Court.

In the case at bar the material facts found were in substance as follows:

1. That the corporation, appellant herein, was, from the 19th day of January, 1855—by mistake printed in the record, February, 1865—to the 3d day of March, 1887, a corporation for religious and charitable purposes, duly organized and existing under and in pursuance of an ordinance enacted by the Legislature of the Territory of Utah and approved by the Govenor thereof on the said 19th day of January, 1855.

Record, p. 82, 1st Finding.

NOTE.—That part of the finding which purports to find *the date of dissolution of said corporation* is a mere conclusion of law, or opinion of the Court, upon a disputed question of law, and is not conclusive on this Court as a fact found.

2. That on the 19th day of February, A. D. 1887, the Congress of the United States passed an act entitled, "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22, 1882, which purported to disapprove, repeal, and annul the said charter and act of incorporation of the said corporation appellant herein.

Record, p. 82, 2d Finding.

NOTE.—By mistake in this finding the court gives the title to the act of March 22, 1882, instead of the act passed February 19, 1887, which is entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy and for other purposes,' approved March 22, 1882."

3. "That immediately before the passage of said act of Congress of February 19, 1887, the said John Taylor was, and for a long time prior thereto had been, the qualified and acting trustee in trust of said corporation of the Church of Jesus Christ of Latter-Day Saints; that after the passage of said act of Congress of February 19, 1887, the said John Taylor claimed to hold, and continued to exercise, the powers conferred upon said Church of Jesus Christ of Latter-Day Saints by said act of incorporation until his death, which occurred on the 25th day of July, A. D. 1887."

Record, p. 82, 3d Finding.

4. "That at the date of the passage of said act of Congress of February 19, A. D. 1887, and for a long time prior thereto, there were no assistant trustees of said corporation, none having been elected, appointed, or qualified since the year 1877—by mistake printed 1887 in record—that said Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant and John W. Taylor were, at the commencement of this suit, counsellors and advisers of the said John Taylor, and continued to his death counselling and advising him respecting the management, use, and control of the property hereinafter described."

Record, p. 82, 4th Finding.

5. "That since the passage of said act of Congress of February 19, 1887, the Church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the acting president, and it has had, duly designated and appointed by the Probate Court of Salt Lake county, in said Territory, in pursuance of the act of Congress aforesaid, the following named trustees, William B. Preston, Robert T. Burton, and John R. Winder, to take the title to and hold such real estate as shall be allowed said religious sect by law for the erection and use of houses of worship, parsonages, and burial-grounds."

Record, p. 82, 5th Finding.

6. "That at the time of the passage of said act of Congress of February 19, 1887, there were no outstanding debts of, or claims against, said corporation so far as appears to the Court from the evidence herein."

Record, p. 83, 6th Finding.

NOTE.—The Court will observe that, in the first finding, the Court below gives the date, March 3, 1887, as the time when the act of Congress, upon which this litigation is based, went into force, and took effect, if valid. In all the other findings the court names this same act as the "act of Congress of February 19, A. D. 1887." The solicitors for the United States use this same description of this act, which became a law, if valid, on March 3, 1887, and not before. The reason for this singular action of the court, and the solicitors for the United States, may appear in the further discussion of this case.

7. "That at the time of the passage of the act of Congress of February 19, 1887, the said corporation owned,

held and possessed seven parcels, tracts or lots, of real estate, which are described by metes and bounds, and properly described in seven items, or paragraphs, of the findings of fact appearing on pages 83, 84 and 85 of the record."

That of said real estate, the following described tract, viz: "All of block eighty-seven (87), in plat A, Salt Lake City survey, in Salt Lake county, Utah Territory, known as the 'Temple Block,' of the value of $500,000, * * * was taken possession of by the agents of the said Church of Jesus Christ of Latter-Day Saints, then existing as a voluntary unincorporated religious sect, when Salt Lake City was first laid out and surveyed in 1848, and since said date has been in possession of said Church as a voluntary religious sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of as aforesaid, it was a part of the public domain, and continued to be such until said land was entered by the Mayor of said city, along with other lands, on the 21st day of November, 1871, under the town-site act of Congress entitled 'An act for the relief of cities and towns upon the public lands,' approved March 2, 1867; that on the 1st day of June, 1872, the same was conveyed by the Mayor of said Salt Lake City to the trustee in trust of said corporation, in whom the title remained until the act of Congress of February 19, 1887, took effect. * * * The legal title to the real estate known as the Temple Block, at the time said act of February 19, 1887, went into effect, was in John Taylor, as trustee in trust for the said corporation, which said trustee in trust subsequently and on the 30th day of June, 1887, attempted to convey the same to William B. Preston, Robert T. Burton and John R. Winder, as trustees."

Record, pp. 83, 88, 85.

That of said real estate the following described tract, viz: "Part of the west half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake county, Utah Territory, and bounded as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot, and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the "Historian's Office" and grounds, of the value of $20,000, * * * was taken possession of by Albert P. Rockwood, in 1848, and was a part of the public domain, and continued to be such up to the 21st day of November, 1871, when the town-site of Salt Lake City was entered as aforesaid; that on the 3d day of October, 1855, the Church of Jesus Christ of Latter-Day Saints, through its trustee in trust, Brigham Young, purchased the said Rockwood's claim to said premises, and at its own cost and expense erected thereon a building, which has ever since been known as the Historian's Office and residence; that said building was large enough to accommodate the historian's family and furnish an office for the church historian; that from the year 1848 until the time of his death in 1875 George A. Smith was the historian of said church and lived in said building with his family, and had the custody of the books, papers, and records of said church relating to its history or public action of its officers and members; that the same have always been kept in said building from the time of its construction until the present time, at the cost of said church, and that said office is and has been necessary for the use of said historian in the discharge of his duties; that in 1872 the said George A. Smith obtained the title to said premises from the Mayor of Salt Lake City under the town-site act, and that after his death the same was conveyed to his wife and one of his grand-

daughters, who afterwards transferred and conveyed the same to Theodore McKean for a valuable consideration; that said Theodore McKean has ever since that date held, and now holds, the same on a secret trust for the use and benefit of said corporation; that said grounds are immediately west of and adjoining the Gardo-House grounds."

Record, pp. 83, 91, 92.

That of said real estate the following described tract or parcel, viz: "Part of lots three (3) and four (4) in block eighty-eight (88), as the same are platted and designated on plat "A," Salt Lake City survey, county of Salt Lake, Utah Territory, and bounded as follows: Commencing at a point four (4) rods north of the southwest corner of said lot four (4), running thence north sixteen (16) rods, thence east twenty (20) rods, thence south twelve and one-half ($12\frac{1}{2}$) rods, thence west fourteen (14) rods, thence south three and one-half ($3\frac{1}{2}$) rods, thence west six (6) rods to the place of beginning, and being part of what is known as the "Tithing Office" and grounds, being of the value of $50,000, * * * was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed in 1848, and ever since that time has been used and occupied by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation for receiving and disbursing tithing and voluntary contributions of property, and that prior to July 1, 1862, buildings and other improvements of considerable value had been built thereon by said church; that at the time said property was taken possession of as aforesaid it was a part of the public domain, and continued to be such until the 21st day of November, 1871, when said land was entered as aforesaid, along with

other lands, under said town-site act, by the Mayor of Salt Lake City; that Brigham Young, who was then president and trustee in trust of said corporation, claimed said land under said town-site law, and it was conveyed to him by Daniel H. Wells, Mayor of Salt Lake City; that in November, 1873, Brigham Young transferred and conveyed said property to George A. Smith, as trustee in trust of the corporation of the Church of Jesus Christ of Latter-Day Saints and his successor in office; that on the death of said George A. Smith the legal title in said premises vested in Brigham Young as such successor, and the executors of said Brigham Young transferred and conveyed said property to John Taylor as the trustee in trust of said corporation, who, in April, 1878, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; that said Edward Hunter afterwards, to wit, on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation, and on the 2d day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder and himself as trustees."

Record, pp. 83, 92.

That of said real estate the following described parcel, viz: "All the south half ($\frac{1}{2}$) of lots five (5) and six (6), in block eighty-eight (88), as the same are platted and designated in plat "A," Salt Lake City survey, in the county of Salt Lake, Utah Territory, said tract containing two hundred square rods of land, more or less, and being a part of what is known as the Tithing Office and grounds, being of the value of $25,000, * * * was possessed, acquired and owned as follows: In the year 1848, Newell K. Whitney, then Presiding Bishop of

said Church of Jesus Christ of Latter-Day Saints, took possession of lot five, block eighty-eight, plat A, Salt Lake City survey, and in the same year Horace K. Whitney took possession of lot six, in said block; that some time in the year 1856, the Church of Jesus Christ of Latter-Day Saints, by its agents, took possession of the south half of said lots and placed thereon yards and corrals, and have continued to occupy the same with said yards and corrals down to this period; that in the year 1870, the mayor of Salt Lake City entered the town-site of Salt Lake City in trust for the inhabitants and occupants thereof, under the law of 1867; that the foregoing lots are a portion of said entry. The said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court for a title to the south half of said lots, and the heirs of Newell K. Whitney also filed an application in the proper court for the south half of lot five, and Horace K. Whitney filed an application in the same court for the south half of lot six. The court awarded the title to the said premises to Brigham Young, as trustee as aforesaid. That afterwards, in the year 1872, Brigham Young, trustee, obtained a deed from the heirs of Newell K. Whitney to said south half of lot five, and in consideration thereof paid them seven thousand dollars, and at the same time the said Brigham Young, trustee, obtained a deed from Horace K. Whitney of lot six and paid him therefor the sum of two thousand dollars. At the time the act of Congress of February 19, 1887, took effect the legal title thereto was held by Robert T. Burton, on a secret trust for the use and benefit of said corporation; that on the 2d day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder and himself, as trustees."

Record, pp. 83, 95, 96.

NOTE.—It will be observed that these four tracts or lots of real estate above described were acquired, possessed and improved by the corporation, appellant herein, before July 1, 1862. That said corporation had vested rights in these lands and owned the equitable title thereto, and had put valuable improvements thereon, long prior to July 1, 1862, is beyond question. The attempt to bring all these four tracts of land under the limitation of the act of July 1, 1862, by averring and decreeing that the legal title did not vest in the church corporation until after July 1, 1862, is unworthy of serious consideration by any court of equity, in the light of the decisions of this Court rendered many years ago, finally and forever settling the law against any such inequitable and unjust ruling.

That of said real estate the following described tract, viz: "All the east half of lot six (6), block seventy-five (75), plat A, Salt Lake City survey, Salt Lake county, Utah Territory, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning, known as the Gardo House and grounds, being of the value of $50,000, * * * was owned by Brigham Young individually at the time of his death, in 1877, and was thereafter transferred and conveyed by his executors to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints, for a valuable consideration, pursuant to the powers in them vested by the will of the said Brigham Young; that subsequently, on the 24th day of April, 1878, the said John Taylor, as trustee in trust, transferred and conveyed the same to

Theodore McKean, on a secret trust for said corporation, who held the same upon said trust until the 2d day of July, 1887, when he attempted to convey the same to William B. Preston and Robert T. Burton and John R. Winder, trustees. * * * Said Gardo House and grounds were used and occupied by said John Taylor, president of said church, from 1878 up to the time of his death, as a residence."

Record, pp. 83, 88, 91.

That the several tracts of land comprising the item of real estate designated as the "Church Farm," valued at $110,000, and the "Summit County" lands valued at $30,000, described in paragraphs six and seven, on pages 83, 84, and 85 of the record, were acquired by said corporation, appellant herein, subsequent to the enactment of the act of Congress of July 1, 1862, but the legal title thereto was at all times held by persons in trust for said corporation upon secret trusts, and not by the corporation itself.

8. That at the time the said "Act of Congress of February 19, 1887," took effect said corporation owned, held and possessed personal property of great value, a schedule of which is set forth in the findings; that the accumulation of said personal property by said corporation extended over a period of twenty years or more; that said corporation "was in its nature and by its statute of incorporation a *religious and charitable corporation* for the purpose of promulgating, spreading and upholding the principles, practices, teachings and tenets of said church, *and for the purpose of dispensing charity*," and that "it never had any other corporate objects, purposes, and authority;" that it "never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized under its act and charter of incorporation to take or hold

any personal property or estate of said corporation, except the trustees provided for by said statute of incorporation;" that prior to the passage of said act of Congress, the personal property of said corporation "had been used for and devoted to the promulgation, spread and maintenance of the doctrine, teachings, tenets and practices of said church;" that "the doctrine of polygamy, or plurality of wives, was one of the said doctrines, teachings, tenets and practices of the said late church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the said act of Congress of February 19, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints."

"That certain of the officers of said religious sect regularly ordained, and certain public preachers and teachers of said religious sect who are in good standing, and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February 19, 1887, promulgated, taught, spread and upheld the same doctrines, tenets and practices, including the doctrine of polygamy, as were formerly promulgated, taught and upheld by the said late corporation, and the said teachings of the said officers, preachers and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect."

"That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of, or in trust for, the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints."

Record, pp. 96, 97, 98.

Upon these findings the court entered in substance the following

DECREE.

1. "That on the 3d day of March, 1887, the corporation of the Church of Jesus Christ of Latter-Day Saints became and the same was dissolved, and that since said date it has had no legal corporate existence."

2. Decreeing the deeds of Taylor, McKean and Burton conveying the "Temple Block," "Gardo House," and "Tithing Office" to Preston, Burton and Winder, trustees appointed by the Probate Court, void and cancelled.

NOTE.—These deeds appear in the findings of fact, beginning respectively on pages 85, 88, and 92 of the record, and are the deeds made exhibits with the answer of the appellant corporation. (See record, pp. 37–45.)

3. Setting apart the "Temple Block"—being block eighty-seven, in plat A, Salt Lake City survey—"to the voluntary religious worshippers and unincorporated sect and body known as the Church of Jesus Christ of Latter-Day Saints, * * * for the erection and use by them

of houses of worship and for their use and convenience in the lawful exercise of worship, according to the tenets of said sect and body."

4. Denying the petitions of Preston, Burton and Winder to set apart to them as trustees certain other parcels of real estate, and decreeing that no part of said real estate has ever been used as parsonage property by said corporation.

5. Decreeing that the *legal title* to all of the real estate set out in the findings of fact was acquired by said corporation subsequent to July 1, 1862, and that "prior to said date neither the said corporation nor its trustees had any *legal title or estate* in and to said real estate or any part thereof."

NOTE.—The findings show conclusively that the corporation had acquired an equitable title and estate, and owned vested rights in four valuable tracts of this real estate, and had possessed, occupied and improved the same many years prior to July 1, 1862, but the decree is utterly silent upon that point.

6. Denying the intervening petition of Romney, Dinwoody, Watson and Clark, filed in behalf of themselves and all other members of said corporation.

7. The seventh paragraph of the decree cannot well be abridged. The entire paragraph is as follows:

"7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution, and do not now exist, any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisi-

tion was by purchase or donation, to or for which said personalty or any part thereof could be used, or to which it could be dedicated, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States; and, furthermore, that there do not exist any natural persons or any body, association or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-Day Saints, nor have there been, nor are there now, any trusts of a definite and legal character upon which this court, sitting as a court of chancery, can administer the personal property hereinbefore set out; and it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-Day Saints has, by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the trusts to which it was dedicated at its acquisition, and for which it had been used by said late corporation, and, by operation of law, become escheated to and the property of the United States of America, subject to the costs and expenses of this proceeding and of the receivership by this court instituted and ordered."

NOTE.—*There is not an averment in the bill, or in the prayer of the bill, or in the acts of Congress upon which the bill is based, even tending to support this paragraph of the decree.*

8. Continuing the receivership, pending the proceedings upon information against the real estate, on the ground that from March 3, 1887, there has not been any person authorized legally to possess, hold and manage the real and personal property at that date belonging to the corporation appellant herein.

Record, pp. 98–101.

ASSIGNMENT OF ERRORS.

Upon the record, rulings and decree the appellants assign the following errors:

1. The court erred in entering the order appointing a receiver.

2. The court erred in overruling appellants' demurrer to the bill of complaint.

3. The court erred in decreeing that the corporation, appellant herein, was dissolved on March 3, 1887, by virtue of the act of Congress of that date.

4. The court erred in holding the act of Congress of July 1, 1862, constitutional and valid in so far as it purports and attempts to limit the powers, franchises and grants given to and accepted by the corporation, appellant herein, many years prior to July 1, 1862. For the court ought to have held said act in said respect unconstitutional and void as impairing and annulling the obligations of a contract.

5. The court erred in seizing and depriving the corporation, appellant herein, of the use, possession, and enjoyment of real estate and personal property, in good faith acquired by it, under its charter powers, long prior to the enactment of the act of Congress of July 1, 1862.

6. The court erred in holding and decreeing that the act of Congress of March 3, 1887, is constitutional and valid in so far as it purports or attempts to repeal the charter of and annul and dissolve the corporation, appellant herein. For the court ought to have held and decreed said act in said respects unconstitutional and void, as impairing, annulling and superseding the obligations of a contract accepted, relied upon, and acted under for more than thirty years.

7. The court erred in holding and decreeing that the act

of Congress of March 3, 1887, is constitutional and valid in so far as it attempts or purports to confer upon the United States, or the officers or agents thereof, power or authority to seize, possess and hold, as forfeited and escheated to the United States, any real estate owned by said corporation on March 3, 1887. For the court ought to have decreed said act unconstitutional and void in said respect, because if it finally shall be held that said act is valid in so far as it repealed the charter of said corporation, and if said corporation shall finally be adjudged dissolved, still, upon such dissolution, the real estate and property belonging to said corporation ought, in law and equity, to be adjudged to be and become the property of the individual members of said corporation at the date of its dissolution, charged with the same trusts, uses and purposes under which it was acquired and held by said corporation.

8. The court erred in decreeing that the tract of land and buildings thereon known and designated as the "Gardo House and grounds" has not been used and occupied by said corporation ever since the year 1878 as the parsonage of said Church corporation, the said decree being in this respect contrary to, and unsupported by, the findings of fact.

9. The court erred in failing and refusing to decree that said corporation, appellant herein, did long prior to July 1, 1862, own an equitable title to, and did own, possess and hold vested rights in the several tracts and lots of real estate known and designated as the "Temple Block," "Tithing Office and grounds" and "Historian's Office and grounds," in accordance with the facts found by the court.

10. That if this court shall finally hold that the act of Congress of July 1, 1862, is valid, and that said act repealed and annulled the charter of said Church corporation, then

appellants claim and aver that the court below erred in denying and refusing to grant the petition of intervention of Romney, Dinwoody, Watson and Clark, because, under the facts found, the court ought in law and equity to have decreed that said petition be granted.

11. The court erred in decreeing that the receivership of the real estate seized from said corporation be continued, because, under the facts found, the court ought in law and equity to have dissolved said receivership and restored the possession of said real estate to its rightful and lawful owners.

12. The court erred in rendering and entering the seventh paragraph of said decree, and each and every part and statement thereof, and in decreeing that all and entire the personal property and estate belonging to said corporation, appellant herein, has become escheated to and the property of the United States of America.

Because the bill of complaint herein utterly fails to support or warrant said seventh paragraph of the decree.

Because the acts of Congress upon which this suit is based do not give, or purport to give, to the United States or its officers, agents or courts any power, right or authority to seize, confiscate, forfeit or escheat to the United States any of the personal property and estate of and belonging to said corporation, appellant herein.

Because said seventh paragraph of the decree is contrary to law, and is wholly unsupported by the findings of fact.

Because, by said seventh paragraph of said decree, the court purports, attempts and intends to divert said personal property and the proceeds thereof from the religious and charitable trusts to which it was dedicated.

Because, if it be finally held that the act of Congress of July 1, 1862, repealed and annulled the charter of said

church corporation, or if it be finally held that the act of Congress of March 3, 1887, repealed and annulled the charter of said church corporation, in either case the findings of fact show that said personal property was accumulated and acquired, partly prior to and partly subsequent to the enactment of the act of Congress of July 1, 1862, and that the same and its proceeds and income were used in the support of religious worship, and in dispensing charity by said corporation while it remained a corporation, and that the religious sect now and at the time of the commencement of this suit known as the Church of Jesus Christ of Latter-Day Saints comprises and includes the body of individuals composing the membership of said church corporation while the same existed, and has had and maintained the same form of organization and government for religious worship and for dispensing charity that was had and maintained by said corporation while the same existed, and that therefore the court ought, in law and equity, to have decreed that if said church and charitable corporation has ceased to exist as a corporation, the said personal property and the ownership, management, and dispensation thereof have vested in and become the property of said religious and charitable organization or association, now found by the court to exist as the Church of Jesus Christ of Latter-Day Saints, charged with the same charitable trusts, uses, and purposes to which the same was originally dedicated.

ARGUMENT.

The first question to which we wish to direct the attention of the Court is the extent and nature of the powers of Congress over the people of the Territories.

It is admitted that all speculation as to the political

rights of the people of a Territory has been put at rest by the decisions of this Court. As was well said by our late lamented Chief-Justice in the case of National Bank *v.* Yankton, 101 U. S., 132:

"It is certainly now too late to doubt the power of Congress to govern the Territories."

"The Territories," he says, "are but political subdivisions of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities. But Congress is supreme for the purposes of this department of its governmental authority, and has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution."

And further, in the same case, he says:

"Congress may not only abrogate laws of the Territorial Legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial Legislature valid and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial government. It may do for the Territories what the people under the Constitution of the United States may do for the States."

Which means, as we interpret the language of the Court, that the people of the United States, represented by the Congress of the United States, may do for the Territories what the people of each particular State may do for any one of the States. That is, that the legislative power of Congress over the Territories has the same extent over the

people of such Territories as the governments of the respective States have over the people of each State. But, as was said in the Sinking Fund cases:

"The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations it is as much repudiation, with all the wrong and reproach that that term implies, as it would be if the repudiator had been a State, or a municipality, or a citizen."
99 United States, 718.

In the Sinking Fund cases, it will be recollected, the act of 1864 provided that Congress might at any time alter, amend or repeal the act creating the Union Pacific Railroad Company, and, in pursuance of that power, whatever rules Congress might have prescribed in the original charter for the government of the corporation and the administration of its affairs, it retained the power to change them by an amendment of the charter. But the Court said that in so doing Congress could not undo what had already been done, and that it could not unmake contracts which have already been made; although it might provide for what should be done in the future, and direct what preparation should be made for the due performance of contracts already entered into. And, quoting further from the language of the opinion, the Court says:

"A prohibition now against contracting debts will not void debts already incurred; an amendment making it unlawful to issue bonds payable at a distant day, without,

at the same time, establishing a fund for their ultimate redemption, will not invalidate the bonds already out. All such legislation would be confined in its operation to the future."

The power of the Congress of the United States over the Territories and the extent and nature of that power is nowhere more clearly expressed than in the case of Murphy *v.* Ramsay, 114 United States, 44. Mr. Justice Matthews, delivering the opinion of the Court, says:

"The people of the United States, as sovereign owners of the National Territories, have the supreme power over them and their inhabitants. In the exercise of this sovereign dominion, they are represented by the Government of the United States, subject only to such restrictions as are expressed in the Constitution, or necessarily implied in its terms, or in the purposes and objects of the power itself; for it may well be admitted in respect to these, as to every power of society over its members, that it is not absolute and unlimited."

And while the right of local self-government is denied to the people of the Territories as a constitutional franchise and they are told that they can claim no right in the enactment of laws which are to govern them, or in the appointment of their officers, but must submit to the alien domination of those who are not their representatives, still the Court holds that the "*personal and civil rights of the inhabitants of the Territories are secured to them as to other citizens by the principles of constitutional liberty, which restrain all the agencies of government, state and national.*"

"Their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States."

These quotations from the well considered opinions of this Court are sufficient, without reference to other cases

which might be quoted upon the same subject, to virtually establish the doctrine that the people of the Territories have no political rights, and that whatever political franchises may be granted them for the time being, Congress has at any time the right in its discretion to take them away; and inasmuch as there is no constitutional requirement providing that legislation for the different Territories shall be uniform, that Congress may grant political franchises to the people of one Territory and deny them to another; that it may provide in one case that all the officers necessary to carry on the territorial government may be appointed by the Government of the United States in one Territory, and that the people shall be authorized to elect their officers in another; that different qualifications for the exercise of the elective franchise may be required in one Territory from those required in another; that test oaths may be required as a prerequisite to holding any office of honor, trust or profit in one Territory and not in another; that a system of public education may be established by Congress for one Territory, while in another, or in all other Territories, the people may be left free to elect their own officers, to establish their own system of police regulations, to provide for the support and conduct of a system of public education, and in other respects to exercise all the powers of local self-government.

But while we are compelled to admit the truth of these propositions, the same high authority has established the doctrine that *the* PERSONAL *and* CIVIL *rights of the inhabitants of the Territories are secured to them by the same principles of constitutional liberty which restrain all the agencies of government, state and national, and that therefore the Congress of the United States has no right to impair the safeguards which protect the civil rights of every citizen, whether in a State or a Territory, and which are*

secured to him by the express provisions of the Constitution of the United States, or by the principles of government which underlie our whole political system.

The privilege of the writ of *habeas corpus*, the right of trial by jury, the prohibition against the passage of bills of attainder or *ex post facto* laws, or laws respecting the establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or the press, or depriving any person of life, liberty or property without due process of law, or of denying to any person the equal protection of the laws, are secured and recognized by the express provisions of the Constitution. And it is equally as well established by the decisions of this Court that Congress can pass no law impairing the obligation of contracts, or legislate back to the Government property that has been given away by acts of Congress, or divesting title of property from one citizen and giving it to another, because such acts are repugnant to the spirit of our institutions.

It follows, from the absolute power vested in Congress of legislation over the Territories, that it may provide such subordinate agencies as may be thought necessary and expedient to exercise the legislative power for the time being over the people of the Territories; and as a matter of history, in pursuance of such authority, Congress has from time to time, in the establishment of Territories, passed organic acts vesting the people of the Territories with the power to chose members of their legislative bodies to enact laws for their government. By an act of Congress approved September 9, 1850, Congress passed an act "To establish a territorial government for Utah Territory." That act provided that the legislative power and authority of the Territory should be vested in a governor and legislative assembly. The 6th section of the act provides as follows:

"SECTION 6. *Be it further enacted*, That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act, but no law shall be passed interfering with the primary disposal of the soil. No tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect."

Section 1844 of the Revised Statutes of the United States provides that the secretary of the Territory shall, within thirty days, transmit to the President of the United States one copy of the laws and journals of each Territorial Legislative Assembly, and two copies to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress. This act was passed on the 29th day of August, 1842, and has remained in force ever since.

It will not be disputed that one of the rightful subjects of legislation is the power to create corporations. This is a power well recognized in the history of the legislation of this country and never denied by any judicial decision to belong to every legislative body, State, National, and Territorial. This power is not embraced in the exceptions contained in the organic act above quoted. In the exercise of this power the Territorial Legislature of Utah, in 1851, by joint resolution, approved the charter of this corporation, which had been previously granted by the so-called State of Deseret, and on the 19th day of Jan. 1855, it confirmed and re-enacted the same. The franchises granted to this corporation were that it should be:

"*First.* A body corporate with perpetual succession, un-

der the original name and style of the Church of Jesus Christ of Latter-Day Saints, as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity. *Second.* To receive and hold, buy, sell, manage, use and control real and personal property, and to acquire the same by gift, donation or in any other manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as such property should be used, managed or disbursed for the benefit, improvement, and erection of houses for public worship and instruction and the well-being of said church."

It was further authorized to possess and enjoy the power and authority to originate, make, pass and establish rules, regulations, ordinances and laws for the good order, safety, government, convenience and control of the said church, and for the punishment or forgiveness of all offenses relative to fellowship, according to church covenants, in order that the pursuit of happiness and the enjoyment of life might not be legally questioned: *Provided, however,* That each and every act or practice established or adopted should relate to the solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship or the religious duties of man to his Maker, *inasmuch as these principles and practices support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States.*

No authority is given to the church by this charter, nor is it claimed in its organization that any authority exists, to set at defiance the laws of the land, nor is it claimed, as has been asserted by the Supreme Court of Utah in the opinion delivered by that court in this case, that the said organization claims to be directed and led by inspiration that is above all human wisdom and subject to a power above all municipal governments. The court claims this

assertion of fact as belonging to history, whereas the very contrary doctrine is asserted in what are called the "revelations" of this church, to be found on page 219 of their book of Doctrine and Covenants. It is said:

"Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land; wherefore be subject to the powers that be until he reigns, whose right it is to reign, and subdues all enemies under his feet. Behold, the laws which you receive from my hand are the laws of the church, and in this light shall ye hold them forth."

And also on page 483 of the same book it is said:

"We believe that governments were instituted by God for the benefit of men, and that he holds men accountable for their acts in relation to them, either in making laws or administering them for the good and safety of society; we believe that no government can exist in peace except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property and the protection of life. We believe that religion is instituted by God and that men are amenable to him, and to him only, for the exercise of it, unless their religious opinions prompt them to infringe upon the rights and liberties of others; but we do not believe that human law has a right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms of public or private devotion; that the civil magistrate should restrain crime, but never control conscience; should punish guilt, but never suppress the freedom of the soul. We believe that all men are bound to sustain and uphold the respective governments in which they reside while protected in their inherent and inalienable rights by the laws of such government."

This book, entitled "Doctrine and Covenants," with the Bible and the Book of Mormon, form the standard of faith and practice of the Church of Jesus Christ of Latter-Day Saints.

The substance of this charter of incorporation, then, is that *it gives the franchise to be a corporation*, with power to acquire, by purchase or donation, real and personal property, and to make rules for the government of the church organization not inconsistent with the Constitution or the laws of the land. It was to be a corporation for religious and charitable purposes. Mr. Morawetz, in his valuable work on Private Corporations (sec. 4, vol. 1, second edition), defines this kind of corporations as follows:

"Religious corporations are those which are formed for the advancement of religion, or the administration of church property for religious purposes. Abbeys and monasteries in former times, and the various incorporated churches now in existence in the United States, are of this class. The distinguishing feature of charitable corporations is that they are founded for the administration of charitable trusts and not for the profit of the corporators themselves."

We maintain therefore:

I.

CONGRESS, BY THE ORGANIC ACT OF SEPTEMBER 9TH, 1850, HAVING GIVEN FULL POWER AND AUTHORITY TO THE TERRITORY OF UTAH OVER ALL RIGHTFUL SUBJECTS OF LEGISLATION, INCLUDING THE POWER AND AUTHORITY TO CREATE PRIVATE CORPORATIONS, AND NO RIGHT TO REPEAL, ALTER OR AMEND THE POWERS AND FRANCHISES VESTED IN THE CHURCH CORPORATION HAVING BEEN RESERVED IN THE ACT OF INCORPORATION, OR IN ANY OTHER ACT OR LAW OF THE TERRITORIAL LEGISLATURE OF UTAH, OR IN THE ORGANIC ACT ITSELF, THE CREATION OF THIS CORPORATION WAS A CONTRACT WHICH COULD NOT BE ALTERED OR REPEALED BY ANY SUBSEQUENT ACT OF THE TERRITORIAL LEGISLATURE OR OF THE CONGRESS OF THE UNITED STATES.

The last clause of section 6, which gives the Legislative Assembly of the Territory authority to legislate upon all

rightful subjects of legislation, declares that all the laws passed by the Assembly and Governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect. By a fair construction of this clause of the section it could not be claimed that to render a Territorial act valid it should be approved by the Congress of the United States, nor has it ever been so held, but it requires the *affirmative* act of Congress to disapprove the Territorial act; and in the absence of such disapproval it certainly becomes a valid legislative enactment; and, as no time is fixed within which Congress may disapprove an act of the Territorial Legislature, it is very clear that this right of disapproval is a mere declaration on the part of the Congress of the United States, in passing the organic act for the Territory, to the effect that the acts of the Territorial Legislature are not the supreme law over the people of the Territory, in the sense in which the acts of a State Legislature would be supreme over the people of the State, and is an announcement that Congress reserves the power of supreme legislation over the Territories, and that it may at any time abrogate the laws of the Territorial Legislature. That it may, in the language of this Court, "make a void act of the Territorial Legislature valid and a valid act void." In other words, that it may at any time repeal an act of the Territorial Legislature, just as it may repeal an act of Congress, or as a State Legislature may repeal an enactment of a former legislature. In the case of National Bank *v.* Yankton, 101 United States, 133, the Chief-Justice, in delivering the opinion of the Court, says:

"In the organic act of Dakota there was no express reservation of power in Congress to amend the acts of the Territorial Legislature, nor was it necessary. Such a power is an *incident of sovereignty* and continues until granted away."

And in the case under consideration, a fair interpretation of the clause of the section containing this reservation is, that this incident of sovereignty has not been granted away by the declaration contained in the first part of the section, declaring that the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of that organic act.

If this be so, then the declaration that all laws passed by the Legislative Assembly and Governor should be submitted to Congress, and if disapproved should be null and of no effect, did not mean to declare that when the Legislative Assembly and Governor should grant a charter of incorporation, or make any other contract, the Congress of the United States could annul such a contract by simply declaring that they disapproved the act of the Territorial Legislature under the provisions of which that contract was made.

The Territory of Utah, by virtue of the organic act of 1850, became a political organism, a body politic. In one sense it might be called a municipality, and as such had the power to act through a Legislative Assemby and a Governor. They, for the time being, were the representatives of this municipal organization, and as such they had the power to act for the interests of all the inhabitants of the Territory. They could pass laws for the opening and improvement of highways, for the organization of militia, for the support and government of common schools, for the building of jails and penitentiaries. And it could scarcely be claimed that, if the Legislative Assembly and the Governor should, by ordinance or law, make a contract with an individual for the performance of any public service, the Congress of the United States could, by a simple declaration disapproving such an act, after the contracting

party had performed services under it, annul and set aside such a contract. And this Court has said that "the relation of the territorial government is much the same as that which counties bear to the respective States, and that Congress may legislate for them as a State does for its municipal organizations." And yet it could not be claimed that where a municipal organization had been created by a State legislature, vesting it with certain powers under which that municipal organization had made contracts with individuals or corporations, therefore, because the State government might entirely abolish such a municipal organization, it could also impair the obligation of a contract made by such municipal organization while it was in being.

We say, therefore, that while it is admitted that the Congress of the United States has supreme legislative authority over the Territories, it has not the power to undo what it authorized to be done. We say that while *the granting of a corporate franchise* is an act of legislation, a law, because it is an act of the law-making power, the only representative of the State in this respect, it *is something more than a law in the general sense of that word.* A law in its general sense is a rule of action, and it applies to every citizen in the community. An act of incorporation, or any other contract made by the authorities representing the State, applies to one individual, or to a limited number of individuals, and while it is a law, as applied to them, it is at the same time a contract made with them, which, if executed, may not be impaired by any subsequent act of legislation. If there is a provision in the charter that it may be repealed by the power granting it—that the artificial person created by the act may be destroyed—then this power of repeal becomes a part of the contract, or if by a general law relating to the subject of corporations it is declared substantially that their charters may be amended,

and that the State reserves the right to alter or repeal them, then this reservation becomes a part of the contract.

In this connection it may be well to refer to the familiar and well-considered language of Mr. Chief-Justice Marshall and Mr. Justice Story in the Dartmouth College case as to the nature of such a contract. Chief-Justice Marshall, 4 Wheat., 637, says:

"The objects for which a corporation is created are universally such as the Government wishes to promote. They are deemed beneficial to the country, and this benefit constitutes the consideration, and in most cases the sole consideration, of the grant. In eleemosynary institutions the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation."

And, after speaking of the objects and purposes of the corporation as defined in its charter, pages 643 and 644, he further says:

"This is plainly a contract to which the donors, the trustees, and the crown, to whose obligations New Hampshire succeeds, were the original parties. It is a contract made on a valuable consideration; it is a contract for the security and disposition of property; it is a contract on the faith of which real and personal estate has been conveyed to the corporation; it is, then, a contract within the letter of the Constitution and within its spirit also, unless the fact that the property is invested by a donor in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing though the objects remain the same, shall create a particular exception taking this case out of the prohibition contained in the Constitution."

And, pages 645 and 646, he says further:

"On what safe and intelligible ground can this exception stand? There is no expression in the Constitution, no

sentiment delivered by its contemporaneous expounders which would justify us in making it. In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the Constitution not warranted by its words? Are contracts of this description of a character to excite so little interest that we must exclude them from the provisions of the Constitution as being unworthy of the attention of those who framed the instrument? Or does public policy so imperiously demand their remaining exposed to legislative alteration as to compel us, or rather permit us, to say that these words, which were introduced to give stability to contracts, and which in their plain import comprehend this contract, must yet be so construed as to exclude it? Almost all eleemosynary corporations, those which are created for the promotion of religion, of charity, or of education are of the same character. The law of this case is the law of all. * * * Religion, charity, and education are, in the law of England, legatees or donees capable of receiving bequests or donations in this form. They appear in court and claim or defend by the corporation. Are they of so little estimation in the United States that contracts for their benefit must be excluded from the protection of words which in their natural import include them? Or do such contracts so necessarily require new modelling by the authority of the legislature, that the ordinary rules of construction must be disregarded in order to leave them exposed to legislative alteration?"

Mr. Justice Story, in delivering his opinion in the same case, quotes from the opinion of the Court in the case of Fletcher *v.* Peck, page 682, as follows:

"A contract is a compact between two or more persons, and is either executory or executed. An executory contract is one in which a party binds himself to do or not to do a particular thing. A contract executed is one in which the object of the contract is performed; and this, says Blackstone, differs in nothing from a grant. A contract

executed, as well as one that is executory, contains obligations binding on the parties. A grant in its own nature amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is always estopped by his own grant."

And further on, in the same connection, pages 684 and 698, he says:

"A grant of franchises is not in point of principle distinguishable from a grant of any other property. * * *

"The truth is that the Government has no power to revoke a grant, even of its own funds, when given to a private person or corporation for special uses. It cannot recall its own endowments granted to any hospital, or college, or city, or town for the use of such corporations. The only authority remaining to the Government is judicial, to ascertain the validity of the grant, to enforce its proper uses, to suppress frauds, and, if the uses are charitable, to secure their regular administration through the means of equitable tribunals, in cases where there would otherwise be a failure of justice."

In respect to corporate franchises, page 700, he says:

"They are, properly speaking, legal estates vested in the corporation itself as soon as it is *in esse*. They are not mere naked powers granted to the corporation, but powers coupled with an interest. The property of the corporation vests upon the possession of its franchises, and whatever may be thought as to the corporators, it cannot be denied that the corporation itself has a legal interest in them."

The general doctrine upon this subject announced by these two eminent judges has been affirmed by this Court by an unvarying line of decisions down to the present day, but it is unnecessary now to refer to them.

We claim, therefore, that the reservation contained in

the organic act of the Territory of the right to disapprove acts passed by the Territorial Legislature is not a reservation upon all the grants of power contained in that section of the organic act, or rather to that part of the section which gives them the right to legislate upon all rightful subjects of legislation. There is nothing in the organic act, nor in the charter under consideration, nor in any act of Congress, which reserves to Congress or to the Territorial Legislature the right to alter, amend or repeal a charter of incorporation. Every decision of this Court in which the right of a Legislature to alter or take away the franchises of a corporation has been upheld is a case in which there was either a special reservation in the charter, or some provision of a general law on the subject of corporations, reserving to the State the power to alter or repeal the act creating the corporation.

The doctrine announced in all these decisions is well stated in the work of Angell and Ames on Corporations, section 767; after stating the doctrine that a grant is irrevocable, something which cannot be changed by the Legislature, the author goes on to say:

"In consequence of the construction that has been put upon the clause of the Constitution above quoted, it has become usual for Legislatures, in acts of incorporation for private purposes, either to make the duration of the charter conditional, or to reserve to itself the power to alter, modify or repeal the charter at their pleasure, because the power of modification or repeal is thus made a qualifying part of the grant or franchise, the exercise of that power cannot, of course, impair the obligation of the grant. Such alterations or modifications as were made in accordance with the forms prescribed by the Constitution which is in force when the alteration is made, and not according to the forms prescribed at the time the charter was granted. *Sometimes the power is reserved by a general act appli-*

cable to all corporations, in which case it may be exercised upon any corporation, as a railroad company whose charter has been granted since the passage of the general act, although no special clause alluding to such reserved power be inserted in the company's charter."

The same doctrine is announced in almost the same language in Field and Morawetz, and almost all writers on the subject of corporations. The power of repeal or amendment can only be invoked where there has been either a provision in the charter itself reserving that power, or some general law on the subject of corporations which reserves to the State the power to alter or amend.

In the case of Miller *v.* State, page 488, 15 Wallace, Mr. Justice Clifford says:

"Subsequent legislation altering or modifying such a charter where there is no such reservation is plainly unauthorized, if it is prejudicial to the rights of the corporators and was passed without their assent. Where such a provision is incorporated in the charter it is clear that it qualifies the grant and that the subsequent exercise of that reserved power cannot be regarded as coming within the prohibition of the Constitution. Such power also, that is the power to alter, modify or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all acts of incorporation, or certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation was one which falls within the reservation and that the charter was granted subsequent to the passage of the general law, even though the charter contain no such condition nor any allusion to such reservation."

In the case of Railroad Company *v.* Church, 98 United States, 108, the Court says:

"If then the old Atlantic and Gulf Railroad Company

and the Savannah, Albany and Gulf Railroad Company went out of existence when their stocks were consolidated, their powers, their rights, their franchises, privileges and immunities ceased with them, and they have no existence except by virtue of the grant of the corporate powers and privileges made by the consolidation act of 1863. That act created a new corporation and endowed it with the several immunities, franchises and privileges which had previously been granted to the two companies, but which they could no longer enjoy. It necessarily follows that the new company held the rights granted to it under and subject to the law as it was when the new charter was granted, and the code of the State which came in force the 1st of January, 1863, before the charter was granted, contained the following provisions:

"'SECTION 1051. Persons are either natural or artificial; the latter are creatures of the law, and, except so far as the law forbids it, subject to be changed, modified, or destroyed at the will of the creator. They are called corporations.

"'SECTION 1052. In all cases of private charters hereafter granted, the State reserves the right to withdraw the franchise unless such right is expressly negatived in the charter.'"

Now here is a general provision of law applicable to all corporations. These two railroad corporations had consolidated and organized a new company, under the consolidation act of Georgia, and thereby became a new corporation under that code, and being a new organization and a new corporation created under the consolidation act, they became subject to this general provision which expressly reserves in regard to corporations the power in the Legislature of altering or modifying any charter at will. Here the provision is a general provision, a general law applicable to all corporations, and of course the law in force at the time of the creation of the corporation, which has reference to the subject of incorpora-

tions, constitutes a part of the charter or contract made with the State at the time the franchise was granted.

So in the case of Greenwood *v.* Union Freight Company, 105 U. S., 15, the Court says:

"We think it must be conceded that according to the unvarying decisions of this Court the unconditional repeal of the charter of the Marginal Company is void under the Constitution of the United States, as impairing the obligations of a contract made by the acceptance of the charter between the corporators of that company and the State, unless it is made valid by that provision of the general statutes of Massachusetts called the 'reserve clause,' concerning acts of incorporation, or unless it falls within some enactment covered by that part of its own charter which makes it subject to all the restrictions, liabilities, and duties set forth in the general laws which now are or may hereafter be in force relating to street railway corporations so far as they may be applicable. The first of these reservations of legislative power over corporations is found in section 41 of chapter 68 of the General Statutes of Massachusetts in the following language:

"'Every act of incorporation passed after the 11th day of March, 1831, shall be subject to amendment, alteration or repeal at the pleasure of the legislature.'

"It would be difficult to supply language more comprehensive or expressive than this."

The same doctrine is laid down by this Court in the Pennsylvania College cases, 13 Wallace, 212. The Court says:

"Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as a grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no State shall pass any law impairing the obligation of contracts. Charters of private corporations are regarded as executed contracts

between the Government and the corporators, and the rule is well settled that the legislature cannot repeal, impair, or alter such a charter against the consent, or without the default, of the corporation ascertained and declared. Of course these remarks apply only to acts of incorporation which do not contain any reservations or provisions annexing conditions to the charter, modifying or limiting the nature of the contract. Cases even arise where the legislature, in granting an act of incorporation for private purposes, either make the duration of the charter conditional, or reserve to the State the power to alter, modify, or repeal the same at pleasure. Where such a provision is incorporated in the charter, it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution. Such a power, also, that is the power to alter, modify, or repeal an act of incorporation, is frequently reserved to the State by general law applicable to all acts of incorporation, or to certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation, and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition, nor any allusion to such a reservation."

In the State of Illinois a religious corporation was created in 1869 by an act of the Legislature of that State, authorized to acquire, hold and dispose of any kind of property. By the 10th section of the act it was declared that the act was subject to any limitation or modification which might thereafter be enacted by general law as to the amount of real estate to be held by the corporation, but no limit was fixed by the charter. A general law was passed in 1845 which authorized any religious society or corporation then existing or thereafter to be formed, to receive by gift, devise or purchase not exceeding ten acres

of land. This law was repealed in 1872, but so much of the act of 1845 as limited the amount of land to be held by religious corporations was re-enacted. The question was as to the title of the religious corporation to hold more than ten acres of land which had been conveyed to it. The court held that as the act of 1869 creating the corporation contained no limit upon the amount of land which might be held by it, if that act was to be given effect without regard to the limitation contained in the general law, it was clear the title to the land in question passed by the deed; but as the general law of 1845 related to the subject of religious corporations and the act of 1872 continued that law in force, both of these general laws had the effect to limit the rights of this corporation to hold more than ten acres of land. (See St. Peter's Catholic Congregation *v.* The German Catholic Congregation, 104 Ill., 440.)

We refer to this case because it was the case of a religious corporation. The same doctrine is announced by this Court in the case of Holyoke *v.* Lyman, 15 Wallace, 500. In all these cases to which reference is made, and we might refer to many others on the same subject, the courts held that in order to give the Legislature the power to repeal, alter, or amend a charter of incorporation, there must be either an express reservation in the charter itself, or some provision of the general law or of the Constitution *on the subject of corporations* which reserves this power to the Legislature, and, so far as we have been able to discover, there is no case which maintains a contrary doctrine. In other words, it has been nowhere held by any judicial tribunal in this country that the general power vested in all legislative bodies to repeal, alter, or amend laws of a general nature gives them the power to alter or amend a charter of incorporation. The State, when it makes a contract,

occupies the same relation to the other contracting party that an individual citizen of the State occupies in making a contract with any other citizen. If it reserves the power to alter, the contract may be altered; but in the absence of any such reservation, when the contract is an executed contract, the State has parted with all its powers to modify or change such contract; and in this case it was never intended by any such reservation of the right to disapprove the acts of the Territorial Legislature by the Congress of the United States, to take away franchises granted, to destroy contracts made by the government of the Territory and to distribute property acquired under such contracts, by a single act of disapproval, after the lapse of more than thirty years from the creation of the corporation, and then by a further provision of the act to despoil the owners of the property acquired in good faith under the provisions of the charter, and to appropriate it to such uses as the Government of the United States might think proper. In this connection it may be well to refer to the decision of this Court in the case of Terret *v.* Taylor, 9 Cranch, 53.

At the time of the Revolution, the Episcopal Church of Virginia was entitled to receive endowments of land for church purposes, and the minister of the parish held the title as a sole corporation, with power of transmission to his successors, and the churchwardens were a body corporate, with power of guardianship over the personal property. The churches thus held a large amount of land at the time of the Revolution which was confirmed to them by statute of the Legislature, and the act of 1774 made the minister and vestry a corporation by the name of the Protestant Episcopal Church. The Legislature of Virginia, by statute passed in 1798, attempted to disincorporate the Episcopal churches in that State by repealing all statutes passed for

their benefit previous to that time, upon the ground that they were inconsistent with the principles of the State constitution and of religious freedom, claiming that all the property acquired by the Episcopal Churches in all the parishes of the State of right belonged to the State, and directing the overseers of the poor in each parish to sell the property and appropriate the proceeds to the use of the poor of the parish, Mr. Justice Story, in delivering the opinion of the Court in that case, pages 49, 50, 51 and 52, says:

"The free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulchre of the dead. And that these purposes could be better secured and cherished by corporate powers cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations. * * * We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*. * * * The property was in fact, and in law, generally purchased by the parishioners or acquired by the beneficence of the pious donors, and the title thereto was indefeasibly vested in the churches. It was not in the power of the crown to seize or assume it, nor of the Parliament itself to destroy the grants, unless by the exercise of a power the most arbitrary, oppressive and unjust. * * * The dissolution of the form of government did not involve in it a dissolution of civil rights. * * * The State itself succeeded only to the rights of the crown, and, we may add, with many a flower of prerogative struck from its hand. The division of an empire creates no forfeiture of previously vested rights of property, and this principle is equally consonant with the common sense of mankind and the maxims of eternal justice. * * * A private corporation created by the legislature may lose its franchises by a

misuse or nonuse of them, and they may be resumed by the government by a judicial judgment upon *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land and is a tacit condition annexed to the creation of every such corporation. * * * But that the legislature can repeal statutes creating private corporations or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please without the consent or default of the corporators, we are not prepared to admit, and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

In the subsequent case of Wilkerson *v.* Leland *et al.*, 2 Peters, 657, the same doctrine was announced. In that case it was claimed that the Legislature of Rhode Island, by a legislative act, could confirm a sale made by an executor in another State, under the exorbitant powers of legislation given by the charter of Charles II, which was the Constitution of that State. The Court says:

"Even if such authority could be deemed to have been confided by the charter to the General Assembly of Rhode Island, as an exercise of transcendental sovereignty before the Revolution, it can scarcely be imagined that that great event could have left the people of that State subjected to its control and exorbitant exercise. That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body without any restraint. * * * The rights of personal liberty and private property should be held sacred; at least no court of justice in this country would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common

principles of justice and civil liberty—lurked under any grant of legislative authority or ought to be implied from any general expressions of the will of the people. A grant or title to land once made by the legislature to any person or corporation is irrevocable. We know of no case in which a legislative act to transfer the property of A to B without his consent has ever been held a constitutional exercise of legislative power in any State of the Union."

While the decisions of this Court, in the cases just referred to, applied to the power of State Legislatures, the doctrine is equally applicable to the legislative powers of the Congress of the United States. In the Sinking Fund cases, to which reference has been made, the Chief-Justice, delivering the opinion of the Court, said :

"The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts ; but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad, neither can they, by legislation, compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality, or a citizen."

In the case of Osborne *v.* Nicholson, 13 Wallace, 622, this Court says :

"Rights acquired by a deed, will, or contract of mar-

riage, or other contract executed according to statutes subsequently repealed, subsist afterwards as they were before, in all respects, as if the statutes were still in full force. This is a principle of universal jurisprudence. It is necessary to the repose and welfare of communities. A different rule would shake the social fabric to its foundations and let in a flood-tide of intolerable evils. It would be contrary to the general principle of law and reason and to one of the most vital ends of government."

In the case of Calder *v.* Bull, 3 Dallas, 388, this Court, says:

"The people of the United States erected their constitutions or forms of government to establish justice, to promote the general welfare, to secure the blessings of liberty, and protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact, and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require, nor to refrain from acts which the laws permit. *There are acts which the Federal or State Legislature cannot do without exceeding their authority. There are certain vital principles in our free republican government which will determine and overrule a flagrant abuse of legislative power.* An act of the Legislature—for I cannot call it a law—contrary to the great first principles of the social compact cannot be considered a rightful exercise of legislative authority."

The theory of our Government is outlined in the Declaration of Independence, as well as in the Constitution of the United States, and it applies to the Territories as well as to the States.

"The power of Congress over the person and property of the citizen can never be a mere discretionary power under our Constitution and form of government. The

powers of the Government and the rights and privileges of the citizens are regulated and plainly defined by the Constitution itself, and when the Territory becomes a part of the United States the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizens strictly defined and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. It has no power of any kind beyond it. And it cannot when it enters on a Territory of the United States put off this character and assume discretionary or despotic powers which the Constitution has denied it. It cannot create for itself a new character separate from the citizens of the United States and the duties it owes to them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out, and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved."

Scott *v.* Sanford, 19 Howard, 449.

The doctrine contended for has been uniformly upheld and maintained by this Court, from the organization of the Government down to the present time, and it cannot be repudiated in this case without striking down one of the strongest and most precious bulwarks of civil and religious liberty.

II.

THE CHARTER OF THE CHURCH CORPORATION RECEIVED THE IMPLIED SANCTION OF CONGRESS, AND THEREAFTER CONGRESS COULD NOT IMPAIR THE CONTRACT NOR DISSOLVE THE CORPORATION, EITHER BY DISAPPROVING THE ACT OF INCORPORATION, OR BY REPEALING THE CHARTER.

But we insist that in this case the ordinance in question must be held to have received the implied sanction of

Congress. The law requires that the secretary of the Territory shall transmit to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress, two copies of the laws and journals of each session of the Territorial Legislature, within thirty days after the end of each session, and one copy to the President of the United States. This Court will presume that the officers have performed their duty in this respect. From 1851 to 1887 there were thirty-six regular sessions of Congress. The sixth section of the organic act provides that all laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect. It is true there is no time fixed within which this disapproval may be manifested, but after this long period of time it is certainly fair to presume that such legislation has received the implied sanction of Congress.

In the case of Clinton *v.* Englebrecht, 13 Wallace, 446, this Court, in speaking of the jury law applicable to the Territory of Utah, says:

"In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute-book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws on or before the first of the next December in each year. The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body.

Certainly, if an act of the Territorial Legislature for the granting of a corporate franchise required the approval of Congress, such approval would unquestionably constitute a valid contract between the corporation and the Govern-

ment of the United States, which could not be impaired by any subsequent legislation on the part of Congress. If, on the other hand, the act had been a general law, applicable to all the citizens of the Territory, as the jury law was in that case, even though Congress had approved the act of the Territorial Legislature, it might at any time, after such approval, have repealed or disapproved the law. In other words, to use the language of this Court in the case of the National Bank *v.* Yankton, 101 U. S.: "It may make a void act of the Territorial Legislature valid, and a valid act void." It would have the same power over territorial legislation, although such legislation had been approved by Congress, as it would have over its own acts of legislation, which, if they be laws of a general nature passed by one Congress, may be repealed by another. In other words, the legislation of the Territory for the time being is the legislation of Congress, and in reason and justice the claim preferred in this case could not apply to the acts of a Territorial Legislature, in granting a charter of incorporation, any stronger than it would apply to the Congress of the United States if it made a similar grant.

But we insist, further, that the act of 1862, passed by the Congress of the United States, recognizes the existence and validity of the contract and charter of incorporation of the Church of Jesus Christ of Latter-Day Saints. By that act the Congress of the United States not only *did not disapprove*, but *approved this charter*, with certain exceptions, in regard to the construction of the powers contained in one of the sections of that charter. That act is entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah." The first section of that act defines the offence

of bigamy and provides for its punishment. The second section declares :

"That the following ordinance of the provisional government of the State of Deseret so-called, namely, 'An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints,' passed February 8th, in the year 1851, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January 19th, in the year 1855, entitled 'An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,' and all other acts and parts of acts heretofore passed by said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield, or countenance polygamy be, and the same hereby are disapproved and annulled: *Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right to worship God according to the dictates of conscience, but only to annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations or other contrivances."

It will be observed that in this section, by the use of the words "and all other acts and parts of acts which establish, support, maintain, or countenance polygamy," there is an implied admission or claim that the ordinance referred to incorporating the Church of Jesus Christ of Latter-Day Saints did support or countenance polygamy ; and that fact being in the legislative mind, the proviso that the act of Congress of 1862, which declared that this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance referred to, nor with the right to worship God according

to the dictates of conscience, but *only* to annul all acts and laws which establish, maintain, protect and countenance the practice of polygamy, must have been intended to limit the operation of this act of Congress to the repeal, or disapproval, of so much of the ordinance incorporating the Church of Jesus Christ of Latter-Day Saints as might be construed to establish, maintain, protect or countenance the practice of polygamy. The proviso was a simple declaration that the act was only intended to annul all territorial laws, this ordinance included, which established, maintained, protected or countenanced the practice of polygamy. It is true that the first clause of the section contains a positive declaration of disapproval and annulment, and this disapproval and annulment is made to apply to all other laws, but the proviso says that this general and positive declaration means that the Congress of the United States *only* intended to annul acts and laws which establish or countenance the practice of polygamy; and as, in their opinion, this was one of such laws, that so far as that act or any other act countenanced the practice of polygamy it was intended to be disapproved and annulled. If this were not so, what is the meaning of the declaration contained in the proviso, that this disapproval should not be construed to affect or interfere with the right of property legally acquired under the ordinance referred to, nor with "the right to worship God according to the dictates of conscience," which is a declaration contained in the third section of the ordinance of incorporation? And what could be the meaning of the last clause of the third section of the act of Congress of July 1, 1862, which declares that existing vested rights in real estate shall not be impaired by the provisions of that section? Who could enjoy the right of property legally acquired under the ordinance, and what existing vested rights were referred to, if the act of Congress was intended

to destroy the corporation created by the ordinance? In case the corporation were dissolved there would be no corporation to enjoy the right of property legally acquired or to maintain vested rights in real estate. By the very terms of these provisos, contained in the second and third sections of the act, the right of property acquired under the ordinance, as well as the right to worship God according to the dictates of conscience, as declared in the ordinance, are preserved, and only so much of the act as countenances polygamy is intended to be repealed. If the Congress of the United States, or any other legislative body, repeals a certain section or provision of a former act, what becomes of the balance of the act? Is it approved, or is it disapproved? What is meant by disapproving one section of an act, or one provision of an act, and saying nothing about the balance? Does this not mean, in the language of common sense and according to all rules of legal interpretation, that the balance of the act shall stand? What else can be supposed than that the provisions of the second section preserving the right of property legally acquired, and the provisions of the third section reserving vested rights in real estate, were intended to continue in existence the corporation created by the ordinance, with power to hold such property and maintain those rights? In this connection we refer the Court to the provisions of the 17th section of the act of 1887, under which this suit was instituted, and in which it is declared that "in such proceedings the court shall have the power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith." This is a clear legislative declaration on the part of the Congress of the United States that at the time of the passage of the act of 1887

the corporation was still in existence; and why should Congress, in the same section of the act, have declared that said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved? If the simple disapproval of the ordinance by the act of 1862 dissolved the corporation, there was no necessity of any further act declaring a dissolution, and it is very clear that if the act of 1862 did not dissolve the corporation it recognized its validity.

If, then, the act of Congress of July, 1862, be construed as a recognition of the validity of so much of the ordinance in question as created the corporation and authorized said corporation to acquire and hold personal and real property, then clearly any subsequent act of repeal or disapproval would be unconstitutional and void, as impairing the obligations of a contract entered into between the Territorial Legislature of Utah and the Government of the United States, on the one part, and the corporation called the Church of Jesus Christ of Latter-Day Saints on the other, approved and validated by the assent of Congress to so much of the ordinance of incorporation as granted these franchises.

But if it should be held that Congress had the power to disapprove the charter of the church and dissolve the corporation, then the property now in possession of the Receiver would belong to the members of the corporation, and it should have been set apart, by the court below, for their use and benefit.

If it should be held by this Court that the act of July 1, 1862, was valid and constitutional in all its provisions, then, whether said act operated to dissolve the corporation or not, it is a clear proposition from the provisions of that act that the Government has no right in law or equity to

forfeit or escheat to the United States, by any subsequent act of legislation, any of the property, real or personal, belonging to the corporation at the time of the passage of said act of 1862, because all property legally acquired under the ordinance, as well as all existing vested rights in real estate, were reserved from the operation of the act; and if Congress, by the provisions of that act, intended to recognize the continued existence of the corporation, that property so reserved, real and personal, belonged to the corporation. If on the other hand Congress, by the act of 1862, intended to repeal and disannul the charter of incorporation, and the act should be held valid for that purpose, then all the property, real and personal, held by the corporation at the time of such dissolution in 1862, became the property of the voluntary association known and recognized as the Church of Jesus Christ of Latter-Day Saints, and so known and distinguished at the time of the passage of the ordinance in question by the State of Deseret, on the 8th of February, 1851; and which association, according to the declaration contained in the first section of the ordinance, was composed of all the residents in the Territory who were members of the Church of Jesus Christ of Latter-Day Saints. Whether these inhabitants, or any of them, composing the membership of the disincorporated church association were polygamists or not, the Congress of the United States by that act recognized their right to hold property legally acquired and to retain existing vested rights in real estate. Those rights were reserved to somebody—either to a corporation whose existence was still recognized, or to the members of a corporation dissolved; and those rights were recognized by Congress without reference to the value of the property held at the time of the passage of the act of 1862, and if the corporation continued to exist from that time till the

passage of the act of 1887, then there was no limitation upon the right to acquire property, real or personal, as to amount or value, except the limitation contained in the third section of the act of 1862, which limited the amount of real property which might thereafter be acquired or held to the value of fifty thousand dollars. But if by the act of 1862 the corporation was dissolved as a political body, then all the property thereafter acquired, whether real or personal, was acquired by those who represented the voluntary disincorporated association which was still known as the Church of Jesus Christ of Latter-Day Saints, and therefore could not escheat or be forfeited as the property of this corporation, but should have been set apart for the benefit of the members of the association, as prayed for in the petition of intervention by Romney, Dinwoodey, Watson, and Clark.

In the well-considered opinion of the Court of Appeals of New York, recently rendered in the case of the People *v.* O'Brien, Northeastern Reporter, pages 696, 698, 699, and 704, in speaking of the property of a dissolved corporation, the court says:

"It is urgently contended that none of the franchises of the corporation survived its dissolution. * * If it could be supposed for a moment that this claim was reasonably supported by authority, or maintainable in logic or reason, it would give great cause for alarm. * * It is a proposition so repugnant to reason and justice, as well as the traditions of the Anglo-Saxon race, in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary. * * * We think that there are no reported cases in which the judgment of the Court has ever taken either the franchises or property of a corporation from its stockholders and creditors, through the exercise of the reserved power of amendment and repeal, or

transferred it to other persons or corporations, without provision made for compensation. * * *

"We are of the opinion that the Broadway Surface Railroad Company took an estate in perpetuity in Broadway, through its grant from the city under the authority of the Constitution, and the act of the Legislature. It is also well settled authority in this State that such a right constitutes property, within the usual and common signification of that word. * * * It is earnestly contended for the State that such a franchise is a mere license or privilege, enjoyable during the life of the grantee only, and revocable at the will of the State. We believe the proposition to be not only repugnant to justice and reason, but contrary to the uniform course of authority in this country. * * *

"It cannot be necessary at this day to enter upon a discussion in denial of the right of the Government to take from either individuals or corporations any property which they may rightfully have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since *Magna Charta*, and in this country always. It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary avocations of life, by gift, or descent, or by making a profitable use of a franchise granted by the State; it is enough that it has become private property, and it is thus protected by the law of the land."

The decision and reasoning of the Court in this case would seem to be conclusive as to the continuance of the rights of the individuals composing a corporation to the property acquired during its existence, even after the death of the corporation, and as to the lack of power in the Legislature or the Government to put to other uses the property so acquired. The principle involved in the above case is identical with that in the case now before this Court, and the doctrine enunciated is that which has been long

established, and the opposite, as the Court declares, is contrary to both reason and justice.

In the case of Greenwood *v.* Freight Company, 105 United States, 19, Mr. Justice Miller says:

"Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the courts may, if the legislature does not provide some special remedy, enforce such rights by the means within their power. The rights of the shareholders of such a corporation, to their interest in its property, are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights."

The language of this Court, above quoted, clearly recognizes the right of the members of a dissolved corporation to its property, and although it was used with reference to a business corporation, the same principle applies to religious and charitable organizations, and it would be repugnant to the whole theory of our Government and the genius of republican institutions to permit the United States to confiscate and escheat the property of such dissolved corporations.

III.

THE ACT OF MARCH 3, 1887, WAS AN ACT OF JUDICIAL LEGISLATION, AND FOR THIS REASON BEYOND THE POWER OF THE LEGISLATIVE DEPARTMENT OF THE GENERAL GOVERNMENT; IT IS, THEREFORE, UNCONSTITUTIONAL.

In the 13th section of the act of March 3, 1887, it is declared that the corporation known as the Church of Jesus Christ of Latter-Day Saints, "in so far as it may now have,

or pretend to have, any legal existence, is hereby dissolved." This is a direct attempt, on the part of Congress, to make a legislative judgment or decree, and is, therefore, unconstitutional and void.

In Hurtado *v.* California, 110 United States, 535–536, this Court says :

"It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but 'the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society,' and thus excluding * * * acts of attainder, bills of pains and penalties, *acts of confiscation*, acts reversing judgments, and acts directly transferring one man's estate to another, *legislative judgments and decrees*, and other similar special, partial, and arbitrary exertions of power under the forms of legislation."

In the case of the United States *v.* Klein, 13 Wall., 146, the Court, having before it the question as to whether or not it was competent for Congress, by an act, to destroy the effect of a pardon that had been granted by the President, held that the enactment, which nullified the effect of the pardon, was unconstitutional and void. It uses the following language :

"The Court is required to ascertain the existence of certain facts, and thereupon to declare that its jurisdiction, on appeal, has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way ? In the case before us, the Court of Claims has rendered judgment for the claimant, and an appeal has been taken to this Court. We are directed to dismiss the appeal if we find that the judgment must be

affirmed, because of a pardon granted to the intestate of the claimants. Can we do so, without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the judicial department of the government in cases pending before it? We think not. * * * We must think that *Congress has inadvertently passed the limit which separates the legislative from the judicial power.*"

In the case of Davis *v.* Gray, 16 Wallace, it was insisted that the corporation, on behalf of which the suit was instituted, had ceased to exist, but the Court, through Mr. Justice Swayne, page 223, gives the following "conclusive answer" to these claims:

"There has been no judgment of ouster and dissolution. Without this they are inoperative. To make them effectual they must be grasped and wielded by the proper *judicial* action."

To the same effect is the decision of this Court in the Pennsylvania College cases, 13 Wallace, 212. Mr. Justice Clifford, for the Court, says:

"Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as a grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no State shall pass any law impairing the obligation of contracts. Charters of private corporations are regarded as executed contracts between the Government and the corporators, and the rule is well settled that the legislature cannot repeal, impair, or alter such a charter against the consent, or *without the default, of the corporation ascertained and declared.*"

In the case of Terrett *v.* Taylor, 9 Cranch, 51–52, Mr. Justice Story, for the Court, says:

"A private corporation created by the legislature may lose its franchises by a misuse or nonuse of them, and they may be resumed by the government by a *judicial judgment* upon *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land and is a tacit condition annexed to the creation of every such corporation. * * * But that the legislature can repeal statutes creating private corporations or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please without the consent or default of the corporators, we are not prepared to admit, and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

There are numerous other decisions which are conclusive upon this point, but we do not deem it necessary to cite them. Mr. Justice Miller, in the case of Loan Association *v.* Topeka, 20 Wallace, 662, enunciates, for the Court the sublime doctrine upon which this principle rests. He says:

"It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognizes no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is, after all, but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is nevertheless a despotism. It may be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimi-

ted dominion of others, whether it is not wiser that this power should be exercised by one man than by many."

The act of Congress of March 3, 1887, not only purports to disapprove the territorial act incorporating the Church, but it also decrees the dissolution of the corporation and confiscates its property.

What has been said in regard to the power of Congress to annul the charter of incorporation of the Church of Jesus Christ of Latter-day Saints applies to the act of July 1, 1862, and of March 3, 1887. In regard to the act of March 3, 1887, it may be further said that it was an act of judicial legislation, even if it were a lawful act, so far as the mere disapproval of the act of corporation is concerned. If it be admitted that, under the power reserved in the organic act, the Congress of the United States, after the lapse of so long a period of time intervening between the granting of the charter and the act of disapproval, might annul the act of incorporation by simply disapproving the act of the Territorial Legislature; yet, whatever is contained in the act of 1887 beyond the mere act of disapproval is new legislation on the part of Congress. What is, then, the nature of that legislation? By the act of disapproval, if Congress had the power to disapprove, the act of the Territorial Legislature ceases to be a law and the corporation ceases to be a corporation. It was dissolved by operation of law. At the time of such dissolution, according to the averments of the bill, it was possessed of a large amount of real and personal property, which is the same property in controversy in this case. What was the legal status of that property at the time of the passage of the act? There was no general law of Congress or of Utah Territory which gave to the Government of the United States a claim upon any of this property, except so much

of the real estate as may have been acquired by the corporation in violation of the provisions of the act of July 1, 1862. By the provisions of the last named act it is very clear that the Government could lay no claim to property legally acquired by the corporation under the provisions of its charter, nor to any property in which the corporation had an existing vested right at the time of the passage of the act. Nor was there any provision in the act of March 3, 1887, which declared that any of the personal property acquired up to the time of the passage of the last named act should be subject to escheat or forfeiture to the United States, and yet the act of March 3, 1887, after having disapproved the act of incorporation and declared it dissolved, by section 17, provides:

"That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, of the description mentioned in the proviso to section 13, and in section 26 of this act, to the respective trustees mentioned in section 26, and for the purposes of this section said court shall have all the powers of a court of equity."

This section, therefore, purports to vest in the Supreme Court of the Territory of Utah, as a court of equity, the power to wind up the affairs of the corporation, to take charge of all the property belonging to the corporation, and to set apart certain portions of the real estate for the purposes mentioned in the act.

The proviso to the 13th section declares:

"That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground, shall be forfeited."

The 26th section declares:

"That all religious societies, sects and congregations shall have the right to have and to hold, through trustees * * * so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation."

And the 17th section declares that in the proceedings of the Court in winding up the affairs of the corporation, it shall be its duty to decree the transfer of the title to real property now held and used by the corporation for places of worship and parsonages connected therewith and burial grounds of the description mentioned in the proviso to section 13, and in section 26 of the act, to the trustees mentioned in said section.

In other words, the act of Congress declares in effect that the corporation is dissolved; that the property which belonged to the corporation now belongs to the United States; that the affairs of the corporation shall be wound up conformably to law, and that the court, a special tribunal appointed for this purpose, shall set apart so much real property to this religious society, sect or congregation as shall be necessary for its convenience and use. What is this but a judicial determination on the part of the law-making power that all this property belongs to the Government; that the Government will cause to be set apart certain portions of the real estate for the use of the congregation or sect of the Church of Jesus Christ of Latter-

Day Saints, and that the tribunal created by the act shall dispose of the balance of the property conformably to law? The question here might be very pertinently asked: Conformably to what law? The act of July 1, 1862, had provided that real estate acquired or held in violation of the provisions of that act should be forfeited and escheated to the United States, but there is no such provision in any law in regard to the personal property, nor is there any provision anywhere that all the real estate held by the corporation should be forfeited or escheated to the United States; but on the contrary, it is expressly provided that existing vested rights in real estate shall not be impaired by the provisions of that act, and, the act of March 3, 1887, provides that the right to forfeit and escheat shall not apply to buildings or grounds used for religious purposes and parsonages connected therewith, and yet this tribunal is authorized to assume control over all the property, real and personal, to set aside certain portions of it for the purposes therein named, and to dispose of the balance conformably to law.

The Congress of the United States is not content with dissolving the corporation and leaving the rights of property belonging to the corporation at the time of its dissolution to be determined by existing laws, but it makes, or undertakes to make, a new law in the nature of a judicial determination to the effect that this property no longer belongs to the corporation, nor to the individual members who composed the corporation, but that it belongs to the United States, and that the Court will set apart so much as in its judgment shall be necessary for the convenience and use of the congregation, or the members composing the congregation, and that the balance shall be disposed of conformably to some law not pointed out in the act, but which the Congress of the United States assumes to

have an existence, fixing rules for the disposition of such property. The bill of complaint filed in this case avers that the real estate held in violation of the provisions of the act of 1862 is subject to escheat and forfeiture, but in regard to the balance of the property the bill prays that such a decree may be rendered by the court as may be just and equitable, to wind up the affairs of the corporation conformably to law and equity, without indicating what those proceedings should be, or asking that the personal property and the real estate not subject to forfeiture under the provisions of the act of 1862 shall escheat to the United States, but the Supreme Court of the Territory of Utah, in rendering its decision, adjudges that all the personal property set out in the decree as having belonged to the corporation of the Church of Jesus Christ of Latter-Day Saints by reason of the dissolution of the corporation, on account of the failure or illegality of the trust to which it was dedicated at its acquisition, and for which it has been used by the late corporation, and by operation of law, has become escheated to and the property of the United States of America.

The Court, therefore, in its final judgment, conformably to law, as understood by it, adjudged the personal property escheated to the United States, set aside a portion of the real estate for the purposes provided by the 26th section of the act, in conformity to the order and decree of Congress, and authorized the balance of the real estate to be proceeded against by information in the law courts of the Territory. It is difficult to understand why the Court did not decree the real estate escheated and forfeited to the United States, as well as the personal property, for there was just as much authority to do the one as the other and there was no legal authority to do either.

IV.

THERE IS NO SUCH THING KNOWN TO THE JURISPRUDENCE OF THE UNITED STATES AS ESCHEAT. THERE IS NO RULE OF LAW BY WHICH PERSONAL PROPERTY OF ANY KIND CAN ESCHEAT TO THE UNITED STATES.

Under the laws of the United States, property may become subject to forfeiture under the provisions of various statutes, but no forfeiture can exist except by statutory provision. The doctrine of escheat belongs to the common law which was varied from time to time by acts of Parliament. "Escheats," says Lord Coke, "are of two kinds: First, *propter defectum tenentis;* second, *propter delictum tenentis.*" See Coke on Lyttleton, 13a, 92b.

The doctrine, as applied to real estates in England, is that where a person dies intestate, without leaving any person who, according to the law of inheritance, can claim as heir the estate in fee, will escheat to the lord from whom the fee is held. And as this doctrine was derived partly from the feudal system, things which do not lie in tenure as a rent charge will not escheat; and at common law an equitable or trust estate would not be forfeited or escheated either for treason or felony, for the simple reason that there is a trustee in possession; and if there be a tenant, no matter whether he holds for himself or in trust for some one else, the reasons which would cause an escheat to the lord would not in that case exist.

See the case of the Attorney-General *v.* Sands; Tudor's Leading Cases in Real Estate, page 775 and notes.

If lands be given to a body corporate or politic, as for instance to a dean and chapter, or to a mayor and commonalty and to their successors, upon its dissolution the land will revert to the donor and not to the lord by escheat.

See Coke on Lyttleton, 13b.

Equitable estates and estates held in trust are not liable to escheat, because they are not the subject of tenure and because the lord can only claim the escheat on account of the defect of the tenant.

See Cox *v.* Parker, 22 Beav., page 168.
Lewin on Trusts, p. 822.
Burgess *v.* Wheate, 1 Eden, 176.
Taylor *v.* Haygarth, 14 Sim., 16.
Beale *v.* Symonds, 16 Beav., 406.

At common law, the crown, by virtue of its prerogative, is entitled to chattels, real or personal, of an intestate leaving no next of kin.

See Tudor's Leading Cases on Real Property, page 784 and notes; *but this does not apply to equitable estates or the property of dissolved religious corporations.*

Personal estate was formerly forfeited to the crown upon conviction of treason or felony.

See McDowell *v.* Bergen, 12 Irish Common Law Reports, N. S., 391; Hawkin's Pleas of the Crown, Book 2, Chap. 49, Sec. 9.

But the harsh rules of the common law in regard to escheats and forfeitures were abolished in cases of treason or felony by Statutes 33 and 34 Victoria.

In the statutes of most of the States of the Union there are laws regulating escheat; and in most of those States—all of them indeed except the State of Louisana—the common law, and the acts of Parliment of a general nature prior to the fourth year of the reign of James I, have been adopted, but the common law has never been adopted by the United States. In the case of Wheaton *v.* Peters, 8 Peters' Reports, 591, the court says: "*It is clear there can be no common law of the United States. The common*

law could be made a part of our federal system only by legislative adoption.

In the absence, then, of any act of Congress adopting the common law as a part of the system of Federal jurisprudence, and in the absence of any statute on the subject of escheats, there can be no such thing known to the Federal system of jurisprudence as an escheat arising from the defect of heirs, or defect of ownership in cases of a dissolved corporation, or an escheat *propter delictum tenentis*, except in cases of forfeiture, by express provisions of congressional statutes, which may properly be called escheats or forfeitures, for an escheat *propter delictum tenentis* and a forfeiture are really the same thing. But, for a case such as the one now before the Court, there is no statute, nor, in the absence of the common law, is there any law conformably to which the Court could decree that this personal property was escheated to the United States. The reasons given by the Court in its decree for escheating this property to the United States are rather curious. One is "that the property is escheated by reason of the dissolution of the corporation." Another is, "on account of the failure or illegality of the trusts to which it was dedicated at its acquisition, and for which it had been used by the corporation." The other is "by operation of law." It is very clear that neither by the dissolution of the corporation, nor by the operation of any law known to Federal jurisprudence, can such property become escheated to the United States. The power of the Congress of the United States to legislate for the Territories, according to the decisions of this Court, is, we admit, full and complete; but after all it is the power of legislation, the power to declare by acts of Congress, what the law shall be in regard to the different Territories. Where the system of jurisprudence, known as the Common Law of England, has been adopted

by the Legislature of any particular State, then, and not till then, does it become the law of that State. And the same thing may be said in regard to legislation for the Territories. The common law is not in force in any Territory unless adopted by statute. It never was adopted in Utah.

V.

THE PERSONAL PROPERTY IS NOT SUBJECT TO ESCHEAT TO THE UNITED STATES ON ACCOUNT OF ANY FAILURE OR ILLEGALITY OF THE TRUSTS TO WHICH IT WAS DEDICATED AT ITS ACQUISITION AND FOR WHICH IT HAS BEEN USED BY THE CORPORATION.

Upon this point we say:

1. As in regard to the other causes of escheat, there is nothing in the act of March 3, 1887, nor in any other act of Congress, which provides that property of this kind shall escheat to the United States on account of the failure or illegality of the trusts to which it had been dedicated.

There is no rule of equity jurisprudence which authorizes a chancellor to declare as forfeited or escheated to the government, property which has been used for an illegal or immoral purpose. Courts of equity will refuse to carry into effect illegal or immoral contracts. Of this there are numerous instances, but we know of no case in which a court of equity, in the absence of any statutory provision on the subject, has been authorized to escheat or forfeit to the government, property which has been illegally acquired, or which is held for illegal or immoral purposes. By the provisions of the statutes of some of the States, courts of equity, at the instance of an escheator, an officer appointed to prosecute on behalf of the commonwealth in such cases, will entertain jurisdic-

tion of escheats. But even where this is provided by positive law, the doctrine of escheats will be avoided by courts of equity in the interests of justice, by the application of the doctrine of equitable conversion. See the case of the Commonwealth *v.* Martin, 5 Munford, 117. In that case the law prohibited aliens from holding real estate. The testator, a citizen of the State, made a will declaring that certain lands held by him should be sold and the proceeds paid to his sisters, who were aliens. The court held that, although they were aliens, and as such could not hold real estate, which under the law in such a case would become escheated to the State, yet that the money arising from the proceeds of the sale of such lands did not escheat to the State. So in the case of Taylor *v.* Benham, 5 Howard, 270, this Court says: "If the whole scope and design of the will could not otherwise be accomplished, it might not be unjustifiable in a court of equity to let the title vest in the executors, for the purpose of being sold and turned into personal estate for the alien legatees, in order to avoid the very escheat now set up by the respondent." "Indeed," says the court, "a court of equity, if it should appear necessary in order to avoid an escheat, will look to substance rather than form —will consider the act as done at once which is directed to be done."

2. The court finds as one of the facts in this case that the corporation of the Church of Jesus Christ of Latter-Day Saints was, in its nature and by its statute of incorporation, a religious and charitable corporation for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said church, and for the purpose of dispensing charity, according to said principles, practices, teachings, and tenets.

The court further finds as a fact that the personal prop-

erty, set out and described in the findings of the court, had been accumulated by the corporation prior to the passage of the act of February 19, 1887; that such accumulation extended over a period of twenty years or more; that this personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets and practices of the Church of Jesus Christ of Latter-Day Saints, and that the doctrine of polygamy or plurality of wives was one of said doctrines, tenets and practices, but that only a portion of the members of the congregation, not exceeding twenty per cent. of the marriagable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the act of Congress of 1887 the voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised that body of individuals who formerly composed the membership of the corporation, and that the doctrines and tenets of the voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints. In other words, that the personal property had been used for spreading and propagating the doctrines of the church, including the doctrine of polygamy.

Now, it cannot be denied that this doctrine of polygamy and its practice, as carried on by a portion of the members of the voluntary religious association, who were the same as the members of the corporation before its alleged dissolution, was, in the mind of the court, the illegal purpose to which this property was dedicated at the time of its acquisition, and that therefore it became escheated to, and was the property of, the United States; and the finding of the court is to the effect that this doctrine was always preached and always practiced, by some of the members of the corporation, as well as by some of the

members of the voluntary organization known by the same name, after the alleged dissolution of the corporation, and yet it is perfectly clear that by the provisions of the act of Congress of July 1, 1862, property which had been acquired by this same corporation before that date, and which had been used for these illegal purposes, was left in the possession and under the control of the corporation, and that vested rights in real estate acquired before the passage of that act by said corporation were not impaired by its provisions, but were permitted still to remain the property of the corporation; and it further appears that, by the provisions of the 13th and 17th sections of the act of 1887, as well as by the provisions of the 26th section of that act, all religious societies, sects and congregations—including, of course, the society, sect and congregation known as the Church of Jesus Christ of Latter-Day Saints—shall have the right to hold, through trustees appointed by the court, so much real property for the erection and use of houses of worship, parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect or congregation; and the court below in its final decree, in pursuance of the provisions of that act, sets apart all of block 87, plat A, of Salt Lake City to the voluntary religious worshipers and unincorporated sect and body known as the Church of Jesus Christ of Latter-Day Saints, to be held, managed and controlled by certain trustees therein named for the benefit of said voluntary religious worshipers, as an unincorporated sect and body, for the erection and use by them of houses of worship and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body. Upon the premises so set aside are situated their temple and tabernacle, the latter building being the place where the doctrines of the church are

promulgated from week to week, and where large numbers of worshipers meet for the purpose of listening to the teachings and hearing promulgated the tenets of the church by its leading members. These provisions of the law and this decree of the court would seem, to any one of ordinary understanding, to admit that the promulgation of these tenets and doctrines is not an illegal act, such as ought to subject the property of the church to escheat or forfeiture. And there can certainly be nothing more illegal or immoral in acquiring and holding personal property to be devoted to the doctrines, tenets and practices of the church than in holding real estate for the same purpose. The provisions of the act of 1862, as well as of the act of 1887, both recognize the legality and propriety of holding both personal and real property, for the very object and purpose for which the court in this case decrees that the personal property should escheat to the government, because those purposes were illegal. Congress, it is true, has passed laws declaring polygamy to be illegal and providing for the punishment of its practice as a crime. But at the very time when the law-making power so declared against polygamy and, as appears from the declarations contained in those acts, knew it was practiced, while recognizing that fact, it not only failed to provide for the forfeiture or escheat of any property held by the organization which sanctioned that doctrine and practice, but it declared in the very same act of July 1, 1862, that personal property acquired by that organization should be held sacred, and by the act of March 3, 1887, it directed that real estate should be set apart for the purpose of enabling the organization to propagate the very doctrines and practices which are pronounced by the court below to be illegal. Heretofore it has always been thought sufficient to provide penalties against the individuals who violate the law

without undertaking, in addition thereto, to invoke the powers of a court of chancery to confiscate the property, not only of those individuals who may be punished for the violation of the law, but also of those members of the organization who are not amenable to the charge of having violated the law; and yet the court below in this case, not only undertakes to escheat the property of those who might be charged with having violated the laws of Congress prohibiting the practice of polygamy, but also the property of that large class of members who are not amenable to that charge, and who never did engage in the practice of polygamy.

In the case of Jackson *v.* Phillips, 96 Mass., 555, it was held that gifts, for purposes prohibited by or opposed to the existing laws, cannot be upheld as charitable even for objects which would otherwise be deemed such. When, however, the scope and purpose of the gift embraces objects, some of which are lawful, or are broad enough to allow of the fund being applied either in a lawful or an unlawful manner, the Court held that the gift would be supported, and its application restrained within the bounds of law. See pages 555, 557, 568 and 569, and authorities there cited.

Now it is found by the court below, as a fact in this case, that the appellant corporation was a religious and charitable corporation for the purpose of promulgating, spreading and upholding the principles, practices, teachings and tenets of the church, and for the purpose of dispensing charity according to its principles, practices, tenets and teachings, and that one of the doctrines, tenets, teachings and practices of the church was the doctrine of polygamy or plurality of wives. It follows, therefore, that there were doctrines and teachings, other than the doctrine of polygamy, which it is not pretended were illegal or illegitimate.

A court of equity should not confound the innocent with the guilty, and deprive all the members of a congregation of property acquired by them because the practices of some who had an interest in that property were illegal or immoral. Such a decree is not in consonance with the principles of either law or equity.

VI.

REAL ESTATE IN WHICH THE CHURCH HAS VESTED RIGHTS THAT CANNOT BE DISTURBED.

If both the acts of Congress referred to should be held constitutional and valid, and it should be declared that any real estate belonging to the corporation can be legally forfeited and escheated to the United States by any legal proceedings, then we claim that the following described real estate cannot be held as forfeited and escheated to the United States.

First. All real estate in which the church held vested rights, either legal or equitable, on the 1st day of July, 1862.

Second. Real estate to the value of Fifty Thousand Dollars at the time of its acquisition acquired after the 1st of July, 1862.

Third. All real estate held or occupied by the corporation at the date of its dissolution, for the purpose of the worship of God, or parsonage connected therewith, or burial ground, and property appurtenant to such real estate as may have buildings erected thereon for any of these purposes.

The claim of the bill in this case in regard to real estate is, that of the property held by the corporation on the 19th day of February, 1887, more than Fifty Thousand

Dollars in value thereof has been acquired and held since the 1st day of July, 1862, which is not held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground. So that from the real estate acquired after the 1st day of July, 1862, must be deducted all such real estate as, on the 3d day of March, 1887, was held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground.

The property in which the church corporation had a vested right at the time of the passage of the act of July 1, 1862, consisted of the Temple Block, the Historian's Office, the Tithing Office—which in the finding of the court is described in two parts—and the real estate connected with those respective premises.

The facts in regard to the first piece of property above described, namely, the Temple Block, are that it was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints, then existing as a voluntary religious sect, when Salt Lake City was first laid out and surveyed in 1848, and ever since that date has been in possession of the church, which held it as an unincorporation sect until it became incorporated, and then as a corporation; that at the time it was taken possession of it was a part of the public domain and continued as such until the land was entered by the mayor of the city, with other land, on the 21st day of November, 1871, under the Townsite act of Congress of March 2, 1867. At the time of the passage of the act of 1887 the legal title was in John Taylor as trustee in trust for the corporation.

The property known as the Historian's Office was taken possession of by Albert Rockwood in 1848, when it was a part of the public domain, and it continued to be a part

of the public domain until the 21st of November, 1871, when the town-site of Salt Lake City was entered as mentioned above. In 1855 Rockwood's claim was purchased by Brigham Young, trustee in trust for the church; the latter built thereon an office for its historian and continued in possession until the present time. The legal title became vested in Theodore McKean, who, at the time of the passage of the act of March 3, 1887, held it in trust for the church corporation.

The Tithing Office grounds were taken possession of by the agents of the church in 1848, when Salt Lake City was first laid out and surveyed, and from that time it was occupied by the church as a voluntary sect until it became incorporated, and then as a corporation. Prior to 1862 buildings and improvements of considerable value had been erected upon it by the corporation. When first taken possession of it was part of the public domain, and continued as such till the 21st day of November, 1871, when it was entered in the town-site of Salt Lake City under the town-site act. Brigham Young, who was then president and trustee in trust of the corporation, claimed said land under the town-site law, and it was conveyed to him by Daniel H. Wells, mayor of the city, under the provisions of said law; Brigham Young conveyed the property to George A. Smith, as trustee in trust for the church; on the death of George A. Smith the title vested in Brigham Young, as his successor, and after Brigham Young's death his executors conveyed the property to John Taylor, as trustee in trust for the corporation, who transferred it to Edward Hunter, in trust for the corporation. At the time of the passage of the act of 1887, by a conveyance from Edward Hunter to Robert T. Burton, it was held by the latter on a secret trust, for the benefit of the corporation.

Without undertaking to go into details as to the facts connected with the original acquisition of these three pieces of property, that is to say, the Temple Block, the Historian's Office, and the two pieces of land belonging and appurtenant to the Tithing Office, it is sufficient to say that the claims of the church to all of this real estate originated in 1848, when Salt Lake City was first laid out and surveyed into lots and blocks, by actual settlement and improvement.

In the case of Hussy *v.* Smith, 99 U. S., page 22, one Smith had settled upon a lot in Salt Lake City, after the passage of the town-site act of March 2, 1867, but before the entry of the town-site was made by the mayor in 1871. He had mortgaged his interest in the property, which was claimed by him, and the Supreme Court, Mr. Justice Swayne delivering the opinion, held that there could be no question but that under the act of Congress of March 2, 1867, Smith had acquired an equitable interest in the premises, which he could sell and convey. The Court says:

"Until the mayor of Salt Lake City made the entry at the proper land office, which he was authorized to make, the legal title was in the United States. By the entry it became vested in the mayor. He held the entire tract so entered, in trust for the several use and benefit of the occupants thereof, according to their respective interests."

In the case of Stringfellow *v.* Cain, 99 U. S., 616, a similar question arose under the town-site law in reference to the right to property in Salt Lake City. In this case the widow of Joseph Cain and her children claimed, by right of inheritance, a portion of the land in controversy, of which her husband and the father of her children had died possessed. Cain died in 1857. His interest in a part of the prop-

erty was sold by his administrators to pay taxes assessed upon the property after his death, and it was bought by the Stringfellow brothers on the 10th of December, 1869. They paid for the property its full value, and were in actual possession when the entry was made by the corporate authorities at the land office. The children were not made parties to the proceedings under which the sale was made, and neither they nor their mother were in possession of the premises when they were sold. The court says:

"All the interest their father had in the lot when he died was an inchoate right to the benefit of the town-site law, in case the property should be purchased from the United States by the corporate authorities, under the provisions of that law. All he could do was to maintain his occupancy and claim the statutory trust in his favor, in case that trust should be created. He held the possession of one seeking to acquire a title by a possession adverse to all the other inhabitants of the town. His right to maintain this adverse possession descended, under the laws of Utah, to his widow and children. There can be no doubt that the possession the children thus acquired, if continued, would have ripened into a perfect title under the trust."

It will be observed in this case that Cain died in 1857, ten years before the passage of the town-site law of 1867. The provisions of the act of 1867 are, that whenever any portion of the public lands has been, or may be, settled upon and occupied as a town-site, it is made lawful for the corporate authorities of such town, if incorporated, to enter at the proper land office the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interests. By the second section of the act, the declaratory statement required to be filed for the purpose of entering the land as a town-site is made to apply only to such land as

is actually occupied by the town and the title to which is in the United States. 14 U. S. Statutes, 541.

So it would seem that the construction placed upon this act by the decision of this Court in the case of Stringfellow *v.* Cain, is that the act of 1867 had the effect of vesting an inchoate right in the settler upon the land, which inchoate right commenced at the time of the settlement. The town-site act of May 23, 1844, (see 5 U. S. Statutes, 657), applied only to such portions of the public domain as had been surveyed, and had been or should be settled upon and occupied as a town-site, not subject to entry under the existing pre-emption laws.

On the 21st day of February, 1855, 10 U. S. Statutes, 611, Congress passed an act to establish the office of Surveyor-General of Utah, and to grant land for school and university purposes. During the same year (1855) this land was duly surveyed by the Surveyor-General of that Territory.

In the case of Colfield *v.* McClellan, 16 Wallace, 332, which is referred to with approval by the Court in the case of Stringfellow *v.* Cain, Mr. Justice Hunt, delivering the opinion of the Court, says:

"The territory on which stands the city of Denver was entered, occupied and possessed by numerous persons before the same was surveyed and had become subject to public entry. Occurrences like the one which gives rise to this bill seem to have been common, and the rights of the parties were protected and regulated by an act of Congress passed May 23, 1844."

This was the town-site law of 1844, as clearly appears by the subsequent recital of certain provisions of the act. A special enabling act for the relief of the citizens of Denver was passed in 1864, 13 U. S. Statutes, 94.

This act authorizes entries to be made by the judge of the county of Arrapahoe, "in trust for the use and benefit of the rightful occupants of said land and the *bona fide* owners of improvements thereon, according to their respective interests, the following subdivisions, or such portions thereof as are settled and actually occupied for town purposes by the town of Denver, to wit:" (Describing the property on which the city of Denver was situated.)

At the time of the passage of the last-named act, Mrs. McClellan, the defendant, was in actual possession of lot 6, which had valuable improvements thereon, and the result, says the Court, "is fatal to the plaintiff's right." The Court, therefore, in this case recognized possession made upon unsurveyed land under the town-site law of 1844, as a right existing either in law or equity to the lot in question, although, according to the strict letter of the act of 1844, such settlements were authorized only upon surveyed lands. It was simply carrying out the doctrine which underlies our pre-emption system, namely, that, by actual settlement and improvement of the land, an inchoate right to purchase, in preference to anyone else, is acquired.

This Court has somewhere said that the town-site acts are in aid of the pre-emption law. Pre-emption laws give the preference to settlers upon the public lands, whether surveyed or not. The very first pre-emption law was of this character, passed on March 3, 1801, and applied to persons who were living upon land within the claim of John Cleave Syms, northwest of the Ohio river, but not included in the patent issued to him and his associates.

In the case of Lamb *v.* Davenport, 18 Wallace, 313, it appeared that before any act of Congress existed by which title to the land could be acquired, settlement on and cultivation of a large tract of land, which included the lots in controversy, had been made and a town laid off into lots

which had been sold and were a part of the city of Portland, Oregon. Mr. Justice Miller, delivering the opinion of the Court, says:

"Of course, no legal title vested in any one by these proceedings, for that remained in the United States. But it is equally well known that these possessory rights and improvements placed on the soil were by the policy of the Government generally protected, so far at least as to give priority of right to purchase whenever the land was offered for sale and where no special reason existed to the contrary. And though these rights or claims rested on no statute or any positive promise, the general recognition of them in the end by the Government and its disposition to protect meritorious settlers, who were the pioneers of emigration in the new Territories, gave a decided and well-understood value to these claims."

And so the act of 1867 deals with the actual settlers upon town-sites as possessing inchoate and equitable rights which may ripen into a perfect title. It authorizes the mayor of the city or town to enter the lands in trust for the inhabitants. This is what was done in this case; the entry was made, the legal title passed, and the presumption therefore is that everything was done which is required by law to be done in order to perfect the title. No pre-emption right could be claimed, because the lands were not subject to pre-emption under existing pre-emption laws.

It will be observed that in this case the Supreme Court of the Territory of Utah, in its decree, declares that the corporation had no legal title or estate in this property prior to July 1, 1862. It is admitted that there was no legal title held by the corporation at the time of the passage of the act of 1862, because the whole Territory of Utah was then public domain, but there was, according to the doctrines laid down by this Court, an inchoate title, an

equitable right to the property in question, arising from the fact that when Salt Lake City was laid off as a town, it was occupied and improved, and continued to be so occupied until the time the patent issued in 1871.

There can be no doubt, from the decisions of this Court, that the Church of Jesus Christ of Latter-Day Saints had and held, on the first day of July, 1862, *such an equitable interest in the Temple Block, the Tithing Office property, and the Historian's Office and grounds, as constituted a "vested right in real estate," which the act of Congress of that date declared should "not be impaired." The property still belongs to the church, and should have been set apart to it.*

In respect to the Gardo House and grounds, they were owned by Brigham Young, individually, at the time of his death in 1877. He was president of the Mormon Church. After his death his executors transferred and conveyed the property to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints, for a valuable consideration, pursuant to the powers vested in them by the will of Brigham Young, and in April, 1878, John Taylor conveyed the same to Theodore McKean, on a secret trust for the corporation, who held the same upon said trust until the 2d day of July, 1887, when he conveyed the property to Preston, Burton, and Winder, as trustees in trust, to hold the same "for the use, benefit and behoof of the president or leader of that certain body of religious worshipers known and called the Church of Jesus Christ of Latter-Day Saints, for a residence or parsonage."

In Tucker *v.* St. Clemens Church, 3 Sandford, S. C. Rep., 251, it was held that the support of the minister is a pious use, and that to support him is a duty that devolves upon every religious society, and to afford him that support

may justly be regarded as one of the objects of its incorporation. This decision was rendered under the laws of New York providing for the incorporation of religious societies.

The 26th section of the act of Congress of 1887 authorizes all religious societies, sects and congregations to hold, through trustees appointed by the Probate Court, so much real property for the erection or use of houses of worship, and for parsonages and burial-grounds, as shall be necessary for the convenience and use of the several congregations. The Probate Court had appointed the trustees, the property had been conveyed to them as a parsonage, and they petitioned the Supreme Court of the Territory of Utah to set it apart for such use, but the prayer of the petition was denied and the decree of the court has made no provision for a parsonage or a burial ground for the church. The Temple Block was set apart for houses of worship. Under the act of Congress the members of the congregation are entitled to a parsonage and burial ground. The Gardo House is property which had been used as a parsonage and place of residence for the head of the church. Is there any reason in law or justice why it should not be retained as such, if the corporation should be dissolved?

The last clause of section 13 of the act of Congress of 1887 declares that no building, or the ground appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited.

This clearly was an exception to and qualification of the act of July 1, 1862. The Gardo House, at the time of the passage of the act of 1887, was held and occupied by John Taylor, the head and president of the church, as a parsonage and as such it was connected with, although not

adjoining, the property which was occupied exclusively for the purpose of the worship of God. As the law expressly declares that the church shall be entitled to a parsonage it does not matter when or how this property was acquired.

The court below finds that proceedings have been instituted, by and with the advice and consent of that court, by information in the District Court of Utah, for the purpose of having this property adjudged forfeited to the United States. It would not undertake to forfeit the property by its own decree, but turned the property over to the District Court and advised that proceedings be instituted in that court to decree a forfeiture. This is certainly a very singular proceeding, which is wholly unauthorized by law and without the sanction of equity.

The remainder of the real property, found to have been acquired since the passage of the act of July 1, 1862, consists of the church farm and the undivided half of a tract of land in Summit county, Utah. And even if the act of July 1, 1862, should be held valid and constitutional, these are the only pieces of real estate which are subject to forfeiture under the letter of the act, after deducting $50,000 from their value at the time the property was acquired.

It will be observed that the court below, in finding the value of each parcel of the real estate, finds that the property is of a certain value in money. The church farm, for example, is referred to as follows: "Said property is known as the church farm and is of the value of $110,000." That is to say, its present value is $110,000; and so substantially with the Summit county property, which is valued at $30,000.

It does not appear from the findings of the court when either of these pieces of property were acquired, nor their value when acquired. The law was violated, if at all, at

the time the property was acquired. It will not do to say that if real property had been acquired in 1863, or later, in Salt Lake City or adjoining the city, of the value at that time of $10,000, and said property had afterwards, and before the institution of this suit, by reason of the increase of population and the progress of improvements, increased in value to $110,000, that the whole or any part of the property over $10,000 in value should be forfeited. This would be to make the holder of the property criminally liable because of the increase of value, brought about by causes over which he had no control.

In the case of Bogardus *v.* Trinity Church, 4 Sanford's Chan. Rep., 758, it appeared that by the charter of Trinity Church, which charter was granted on the 27th day of June, 1704, the church was limited to a clear income from rents of 500 pounds per annum. The title to the lands in question was acquired in 1705, when, as the court says, the whole church farm was not worth as much as one city lot of 25 x 100 feet was at the time of the litigation, and the court held that the accidental increase in the income of that corporation to a point beyond which its charter prescribes, could not have the effect to divest its title to such estates or any portion of them.

In the case of Harvard College *v.* The Aldermen of Boston, 104 Mass., 488, it appeared that Harvard College, by act of 1813, was "authorized to take and hold real estate of the clear yearly value of $12,000, in addition to what they are now authorized to hold." In that case the court held that the college was entitled to continue to hold the property, notwithstanding its annual value then greatly exceeded the limit fixed by its charter.

RECEIVERSHIP.

Under the averments of the bill and the proofs taken there was no authority to appoint a receiver because :

1. The bill does not describe any property that the Government claims has been escheated, or is subject to escheat or forfeiture.

2. There is no averment or claim that any of the personal property is subject to escheat or forfeiture to the Government.

3. There is no averment in the bill, or proof, that any of the property referred to was in danger of being lost or injured, or that it was not safe in the hands of the persons who are alleged to be in the possession of the same—it is only claimed to be illegally in their possession, and that they have no right to hold it.

" The appointment of a receiver is not a matter of strict right. Such an application always calls for the exercise of judicial discretion, and the chancellor should so mould his order that while favoring one, injustice is not done to another. If this cannot be accomplished the application should ordinarily be denied."

Fosdick *v.* Schall, 99 U. S., 253.

" If, upon a consideration of all the circumstances of the case, it is apparent that a greater injury will ensue from appointing a receiver than from leaving the property in its present position, or if other considerations of propriety or convenience render the appointment improper or inexpedient, the Court will refuse to interfere."

High on Receivers, Chap. 1, Sec. 7, p. 9.

Daniell's Chancery Pleading and Practice, Vol. 2, Chap. 28, Sec. 1.

Story's Eq. Juris., Vol. 2, Chap. 21, Secs. 831–835.

Pomeroy's Eq. Juris., Vol. 3, p. 357–365, Secs. 1330–1336.

A receiver could only be legally appointed when it appeared to the court that there was property which was subject to forfeiture or escheat to the United States, and that there was manifest danger of loss or injury to the property if it should remain in the possession of those who held it during the pendency of the litigation. No such showing as this was made or even attempted. The bill does not describe any property as being subject to escheat or forfeiture, nor does it aver that injury or loss would be sustained if it remained in possession of the trustees of the corporation.

If it be contended that the action of the court in the appointment of a receiver was proper because the corporation was dissolved, and therefore there was no one to hold the property, we answer that it appears from the record, and is found as a fact by the court, that no part of the property in controversy was held by the corporation itself. The title was vested in trustees, who were just as capable of holding, managing and preserving it for the members of the church as an unincorporated religious sect, as they had been to hold it for the corporation. The record shows that at the time this suit was brought the titles to the real estate were held by trustees, duly appointed by the probate court, in pursuance of the act of Congress of March 3, 1887, and that the personal property was in the possession of William B. Preston, the presiding bishop of the church. So that the reason for the rule which justifies the appointment of a receiver in the case of a dissolved corporation did not exist in this case, and the appointment was without precedent or legal authority.

LASTLY.

From the foregoing it will be seen that the appellants' claims are :

1. The acts of Congress of July 1, 1862 and of March 3, 1887, are unconstitutional and void in so far as they attempt to annul the charter of the appellant corporation, or to dissolve said corporation, or to limit its power to acquire and hold real property, because said charter was and is an executed contract which cannot be impaired, either by dissolving the corporation or by limiting its rights and powers in respect to the acquisition of property.

2. The power of Congress to disapprove and annul acts of the Governor and Legislative Assembly of Utah Territory applies to such acts as are general in their character, and does not apply to an accepted charter of a private corporation which contains no reservation of the right to alter, amend or repeal the same, when there was no general law of the Territory reserving such right at the time the charter was granted.

3. The charter of the church corporation, by the act of July 1, 1862, as well as by the lapse of time between its enactment and attempted disapproval—*thirty-six years*—received the sanction of Congress, and therefore could not be annulled and the corporation dissolved.

4. The act of Congress of March 3, 1887, was an act of judicial legislation by which it attempted to decree the dissolution of the corporation and determine what should be done with its property—virtually confiscating the same to the United States, without any default on the part of the corporation, or any judicial judgment of ouster or dissolution.

5. For the intervenors we claim that if the acts of Congress above mentioned could and did dissolve the appellant corporation, then the property seized by the receiver, and now in his possession, belongs to the members of the Church of Jesus Christ of Latter-Day

Saints as an unincorporated religious sect, and should have been set apart for their use and benefit under the petition of intervention of Romney, Dinwoody, Watson and Clark, because there is no such thing known to the jurisprudence of the United States as escheat, and because there is no rule of law by which personal property of any kind can escheat to the United States.

6. All the personal property was legally acquired by the church, and Congress never attempted to limit or restrict it as to the kind or amount of personal property it might acquire and hold. Such property is not subject to escheat to the United States on account of the failure or illegality of the trusts to which it was dedicated at its acquisition, and for which it had been used by the corporation, because the act of Congress of March 3, 1887, recognizes the power and right of the church to hold property, by directing that so much of its real estate as is used for the purposes of the worship of God, or parsonage connected therewith, or burial-ground, shall be transferred to and held by trustees for the church. And because, if it be conceded that the promulgation of polygamy, to a small extent, as appears from the findings of the court below, is one of the uses to which it has been devoted, still there are numerous other uses, which are both legal and moral, to which it was dedicated and for which it should be used.

7. Prior to July 1st, 1862, the church had such a vested right in the Temple Block, the Tithing Office property and the Historian's Office and grounds, as could not be impaired, even if the provisions of the act of Congress of that date are valid which limit the amount of real property to be thereafter acquired and held by the church. Because its claim to this property dates back to the first settlement and location of Salt Lake City in 1848, and it is such a claim and right as this Court has held to be valid in law and equity.

8. The church is entitled to have and hold the Gardo House and grounds as a parsonage, pursuant to sections 13 and 17 of the act of Congress of March 3, 1887 (irrespective of its value or the time of its acquisition), because it had been used and occupied by the president and head of the church, as a parsonage, eight years prior to the passage of the act of March 3, 1887, and is still so used and occupied.

9. While the appellants insist that, whether the church corporation is dissolved or not, either the members of the unincorporated sect, or the corporation, as the case may be, are entitled to all the property in the hands of the receiver, whether real or personal, and that no part thereof is subject to forfeit or escheat to the United States, yet if it should be held that any part thereof is subject to forfeit or escheat, the forfeiture could only apply to so much of the church farm and Summit county land as might be found to be in excess of the fifty thousand dollars in value at the time of their acquisition, which the church had the legal right to acquire and hold after the passage of the act of July 1, 1862.

10. The appointment of the receiver was erroneous, because it did not appear to the Court, either from the bill of complaint or from the proofs, that there was any property subject to escheat to the United States, or that any of the property of the corporation was liable to injury or loss if it remained in the possession of those who then held it, during the pendency of the suit, and because the corporation did not hold the title to any of the church property, it being at the time of the pretended dissolution of the corporation in the possession of certain trustees, who had been duly appointed to hold the titles for the church, and who were as capable of managing and controlling the property for the members of the unincorporated sect as for the corporation itself.

It will be observed that, so far as the personal property is concerned, there is nothing in the act of 1887 which assigns any reason or cause for declaring the corporation dissolved, or for directing the Supreme Court of the Territory of Utah to wind up its affairs and set aside a portion of the real estate for the purposes named in the 26th section of the act. Congress assumes that the act of 1862 has been violated and authorizes the Attorney-General to institute proceedings to forfeit and escheat to the United States property acquired in violation of the act of 1862, the proceeds to be disposed of by the Secretary of the Interior for the use of the common schools of the Territory. These schools are open to the children of people of all classes and denominations. Therefore this property, donated by members of a religious body for certain specific purposes, is to be seized and diverted to other and different uses, and for the benefit of persons who never contributed anything to it.

By the provisions of the 17th section of the act the court is required to make such a decree as shall be proper to effectuate the transfer of the title to real property "now held and used by the corporation for places of worship and parsonages connected therewith and burial grounds," to trustees for the purposes mentioned in the law.

The first clause of this section declares the corporation to be dissolved, and requires the Attorney-General to institute such proceedings before the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of the section and to wind up the affairs of the corporation conformably to law. To execute the foregoing provisions of the section is to decree that the corporation is dissolved; this the act of Congress requires the Court to do, and then to wind up its affairs conformably to law.

In pursuance of the broad provisions of this section 17, the Supreme Court of the Territory, at the instance of the Attorney-General, seized upon all the property of the corporation, real and personal, and decreed a dissolution of the corporation, thus *executing* in the language of the act the provisions of this section. A receiver was appointed to take and hold the property, in the absence of any cause for such appointment, such as usually gives authority to courts to appoint receivers.

The alleged dissolution of the corporation and the assumption on the part of the court, before any trial had or investigation made, before even an answer was filed to the allegations of the bill, authorized, in the opinion of the court, the government of the United States to seize and confiscate all property which might be found, such as cattle and sheep, stocks and lands, houses, temples and tabernacles, and authorized the court, through its officers, to take possession of all such property, although it is alleged in the bill that certain persons named therein, at the time of the institution of the suit, held such property in their possession as trustees for the corporation.

The court in its decree specially finds that all the real property described in the findings of the court was, at the time of the institution of the suit, held in trust for the corporation. These proceedings are extraordinary, to say the least of them. The act of Congress assumes that it not only has the power to disapprove the act by which the corporation was chartered, but to declare that the property may be seized by the Government officers without any evidence that the corporation has in any respect violated the provisions of its charter, that it may be held in the hands of a receiver and finally distributed in such manner as the court might think proper.

Can such proceedings be justified except upon the

ground that the Government of the United States, its legislators, its courts and their officers, are not bound to regard that provision of the fundamental law of all free governments, that no person shall be deprived of life, liberty, or property, without due process of law? We think not. Here is a judgment without a hearing, a seizure without a cause, and an escheat without the pretence of any authority of law. The decree appealed from must certainly be reversed.

JAMES O. BROADHEAD,
FRANKLIN S. RICHARDS,
For Appellants.

JOSEPH E. McDONALD,
JOHN M. BUTLER,
Of Counsel.

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Supreme Court of the United States.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL., Appellants,

vs.

THE UNITED STATES.

ARGUMENT OF HON. JAMES O. BROADHEAD,

For the Appellants.

Delivered January 16 and 17, 1889.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

Supreme Court of the United States.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL.,
APPELLANTS,
v.
THE UNITED STATES.

Argument of Hon. James O. Broadhead.

If your Honors please, I will make a statement of such facts as I think will be necessary to a full understanding of the arguments on the issues in this case.

STATEMENT OF FACTS.

At a very early period, in 1847, a Mormon settlement was made in the Salt Lake valley. When that settlement was founded, the territory was Mexican soil. In 1848, as your Honors remember, by the treaty of Guadaloupe Hidalgo, it became United States territory. But it was not until 1850 that a territorial form of government was organized by act of Congress. In the meantime, the persons composing the Mormon settlement had established a provisional government called the State of Deseret. Just before the territorial government went into operation the

legislature of the provisional government passed a charter of incorporation for the Church of Jesus Christ of Latter-Day Saints.

Mr. Justice FIELD. The legislature of Deseret?

Mr. BROADHEAD. Yes, sir. After the territorial government was organized, a joint resolution was passed by the legislature confirming the acts of the Assembly of the State of Deseret, and in 1855, by another act of the Territorial Legislature this act of incorporation was confirmed.

There have been two acts of Congress passed in reference to this charter; one passed in 1862, and the other in 1887. I wish to call your Honors' attention especially to the provisions of the act of incorporation—the charter of the Church of Jesus Christ of Latter-Day Saints, and two or three sections of the act of 1862, and three sections of the act of 1887, under which the different questions will arise that are to be discussed in this case. The charter is found in the record at page 4. I propose now to read the first three sections of that charter:

"AN ORDINANCE incorporating the Church of Jesus Christ of Latter-Day Saints. (Approved February 8, 1851.)

"(550) SEC. 1. *Be it ordained by the General Assembly of the State of Deseret*, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein and which are known and distinguished as 'the Church of Jesus Christ of Latter-Day Saints' are hereby incorporated, constituted, made, and declared a body corporate, with perpetual succession, under the original name and style of 'the Church of Jesus Christ of Latter-Day Saints,' as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

"(551) SEC. 2. *And be it further ordained*, That said body or Church, as a religious society, may, at a general or special conference, elect one 'trustee in trust,' and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said Church, which said property shall be free from taxation, which trustee and assistant trustees, when elected or appointed, shall give bonds, with approved security, in whatever sum the conference may deem sufficient, for the faithful performance of their several duties, which said bonds, when approved, shall be filed in the general Church recorder's office, at the seat of general Church business, when said bonds are approved by said conference, and said trustee and assistant trustees shall continue in office during the pleasure of said Church; and there shall also be made by the clerk of the conference of said Church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general Church recorder's office, at the seat of general Church business, and when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction and the well-being of said Church.

"(552) SEC. 3. *And be it further ordained*, That, as said Church holds the constitutional and original right, in common with all civil and religious communities, 'to worship God according to the dictates of conscience,' to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that such Church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, con-

veniences, comfort, and control of said Church and for the punishment or forgiveness of all offenses relative to fellowship according to Church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association, domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: *Provided, however*, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States or of this State and are founded in the revelations of the Lord."

The first act that was passed by Congress, which had relation to this corporation as such, was the act of July 1, 1862. It is found printed in my brief at page 4. There are two sections of that act which I propose to read for the consideration of the Court, because the question of its construction as well as the construction of the act of incorporation, which I have just read, will necessarily come up in the discussion of the issues in this case. The act is entitled:

"An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and anulling certain acts of the Legislative Assembly of the Territory of Utah."

I pass by the first section, because that had relation to the subjects of bigamy and polygamy.

Mr. Justice BRADLEY. Where is that act found?

Mr. BROADHEAD. At page 4 of the brief of Broadhead and Richards. It is also in the Government's brief. I will read the second and third sections:

"SEC. 2. *And be it further enacted*, That the following ordinance of the provisional government of the State of Deseret, so called, namely, 'An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints,' passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the governor and legislative assembly of the Territory of Utah by an act passed January nineteen, in the year eighteen hundred and fifty-five, entitled 'An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication, and distribution,' and all other acts and parts of acts heretofore passed by the said legislative assembly of the Territory of Utah, which establish, support, maintain, shield, or countenance polygamy, be, and the same hereby are, disapproved and annulled: *Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right 'to worship God according to the dictates of conscience,' but only to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

"SEC. 3. *And be it further enacted*, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: *Provided*, That existing vested rights in real estate shall not be impaired by the provisions of this section."

12 U. S. Statutes, 501.

I read from the record, pages 35 and 36, the thirteenth, seventeenth, and twenty-sixth sections of the act of Congress of 1887:

"SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section three of the act of Congress approved the first day of July, 1862, entitled, 'An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah,' or in violation of section 1890 of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God or parsonage connected therewith, or burial-ground, shall be forfeited."

I pass over section fourteen of the act because it merely relates to the matter of procuring evidence. Section seventeen, which is the main section and the section under which the present suit was instituted, provides:

"That the acts of the legislative assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section, and to wind up the affairs of said

corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial-grounds, and of the description mentioned in the proviso to section thirteen of this act, and in section twenty six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity."

That section constitutes the supreme court of the Territory of Utah, which, under existing law, was an appellate tribunal, into a court of original jurisdiction, with powers and directions made by the Congress of the United States, that it shall proceed to take charge of certain property, set apart some portions of it, and dispose of the balance conformably to law, and for this purpose it vests it with the powers of a court of equity.

"SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial-grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation." (24 U. S. Statutes, 637, 638, and 641.)

It was under the provisions of section seventeen that this suit was instituted in the Supreme Court of the Territory of Utah, and final judgment rendered by that court, escheating all the personal property belonging to this corporation at the time of the institution of the suit, to the

United States, and turning over the real property to the district court of the third judicial district of Utah, for the purpose of instituting proceedings to forfeit that property, under the provisions of the act of July 1, 1862.

The act of Congress provides that on appeal to the Supreme Court of the United States there shall be a statement made by the court below of findings of facts, and that this Court will not consider any evidence except what is contained in that statement. Such a statement of facts was made, and I will epitomize it and the pleadings to show the issue involved.

The Bill.

1. At the time of the passage of the act of Congress of 1887 the Church was an existing corporation. It is averred in the 5th paragraph of the bill that the corporation existed "from its organization until the 19th of February, 1887;" this is admitted in the answer, and it is there claimed to be a corporation or association for religious or charitable purposes.

The bill admits that the corporation had unlimited power to acquire and hold real estate and personal property.

2. The bill claims that the corporation did acquire large amounts of real estate over and above $50,000 in value, after the passage of the act of July 1, 1862, all of which amount in excess of the $50,000 in value is claimed to be subject to forfeiture, except such as was held, used, or occupied as buildings, or ground appurtenant thereto, for the worship of God or parsonage or burial-ground.

3. The bill claims that on the 19th of February, 1887, the corporation was dissolved by act of Congress of that date, and that all real estate owned and occupied by the corporation in excess of $50,000, and which was not

used for church purposes specified in the act, was subject to forfeiture, whether the corporation had a vested interest in such property or not.

4. The bill claims that at the time of the institution of the suit the appellants were unlawfully exercising the powers of a corporation, and unlawfully possessing and using the property, real and personal; that there was no one lawfully authorized to hold or use such property, and that by reason thereof the property is subject to irremedial loss and destruction.

This was the basis of the claim for the appointment of a receiver. The bill prays for the appointment of a receiver to take charge of all the corporate property, real and personal, for the dissolution of the corporation, for the appointment of a commissioner to set apart the real estate used for the purposes aforesaid, for the winding up of the affairs of the corporation conformably to law and equity, and for general relief.

The bill contains no charge that the corporation applied the property rightfully acquired under its charter to other than religious or charitable purposes. It charges no *ultra vires* act of the corporation or its trustees, except the acquiring of real estate exceeding $50,000 in value. It asserts no claim on the part of the United States to the personal property. It gives no description of property, real or personal. It avers no fact of fraud or mismanagement, or incompetency or insolvency, on the part of those in possession of the property. It asserts no claim of right on the part of the United States, under the act of 1862 or the act of 1887, or any other act or law, to seize, confiscate, forfeit or escheat any of the personal property of the corporation.

The bill is based entirely upon the claim that the act of Congress of 1887 dissolved the corporation, without giving

it a day in court, and pronounced judgment of escheat and forfeiture upon all its property, real and personal, and that a court created for this special purpose had nothing to do but to seize the property, set apart a portion of the real estate for church purposes to the persons who composed the corporation, and turn over all the balance to the United States.

6. Appellants demurred to the bill, and pending the the demurrer, the court entertained a motion to appoint a receiver. An order was made appointing a receiver and requiring the officers and agents of the corporation to deliver up to him all its property, real and personal, of every kind.

Thereupon, the receiver took charge of everything, temples and tabernacles, houses and lands, cattle and sheep, stocks, bonds and tithings,—the voluntary contributions intended for charitable and religious purposes—everything that a hungry receiver could smell out or lay his hands upon.

The Answers.

7. The corporation filed an answer, after the demurrer had been overruled, claiming that the act of July 1, 1862, and the act of March, 1887, were unconstitutional, in so far as they attempted to dissolve the corporation, or limit its right to hold property, or purported to escheat the property of the defendants; that the charter was a contract, which, by its acceptance, became an executed contract; that relying upon this contract it had acquired and held valuable real and personal property; that it held, owned, possessed, and occupied a large amount of real estate, describing it, long prior to the passage of the act of 1862; that another piece of property, acquired since 1862, was used as a parsonage; that in pursuance of the

provisions of the act of 1887, the Church applied to the probate court of Salt Lake county, Utah, to appoint three trustees to hold these tracts of land for church purposes; that trustees were duly appointed, having first been named by the authorities and sustained by the conference of the church members, after which the lands were conveyed by the persons then holding the legal titles to Bishops Preston, Burton, and Winder, the trustees so appointed; that the corporation had acquired, from time to time, personal property which was used solely for charitable and religious purposes; and that all the property, real and personal, has at all times been held by trustees, and not by the corporation in its corporate name.

Answers were also filed by the trustees named as defendants in the suit, showing that they held the property in the manner described in the answer of the coporation.

8. Petitions were filed by Preston, Burton, and Winder, trustees appointed by the probate court, and parties to the suit, claiming the property deeded to them as trustees, and alleging that the Church had a vested interest in the Temple block, the tithing office property, and Historian office and grounds, prior to the passage of the act of 1862; that the Temple block had been and was used exclusively for religious purposes, and that the Gardo House had been used as a parsonage, the trustees averring that they held the legal title to the said pieces of real estate.

These petitions were all answered by the United States, and replications to the answers filed.

9. George Romney, Henry Dinwoody, James Watson, and John Clark, for themselves and the other members of the Church, filed intervening petitions, giving schedule of the real and personal property taken by the receiver, averring that they are members of the Church, residing in Utah Territory; that the Church has for many years

been a voluntary sect, organized for religious and charitable purposes; that the Church became possessed through trustees of all the property, by the voluntary contributions of its members, to be held and applied for the maintenance of its religion and charities by trustees elected by the members semi-annually at a general conference of the Church; that John Taylor, the last trustee, died in July, 1887; that since his death no trustee has been appointed; that the property is being wrongfully withheld by the receiver; that they are the equitable owners of the property and beneficially interested. The prayer is that the property belongs to the individual members of the Church, who are authorized to appoint trustees to receive and hold it; and that, if the Court should declare the corporation dissolved, the property be turned over to trustees, for them, to be used for such charitable and religious purposes as the Court might direct.

This intervening petition was answered by the Government, asserting that the property had by operation of law escheated to the United States. To this answer there was a replication.

Findings of Fact by the Court.

1. That the corporation was, from the 19th of January, 1855, to the 3d of March, 1887, a corporation for religious and charitable purposes, duly organized and existing under the ordinance approved by the Legislature of Utah.

2. That at the time of the passage of the act of 1887, John Taylor was acting trustee in trust for the corporation, which authority he claimed to hold till his death, July 25, 1887.

3. That at that time there were no assistant trustees, none having been chosen, but that certain persons named

as defendants were counsellors and advisers of Taylor up to the time of his death.

4. That since the passage of the act of 1887 the Church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which Wilford Woodruff is the acting president, and that this voluntary sect has had duly appointed by the probate court of Salt Lake county, in pursuance of the act of Congress, the following named trustees, viz., William B. Preston, Robert T. Burton, and John R. Winder, to take title to such real estate as shall be allowed to be held by said sect for places of worship, burial-ground, and parsonage.

5. That there are no outstanding debts of the association.

6. That at the time of the passage of the act of 1887, the corporation owned, held, and possessed seven parcels of real estate.

That in regard to these parcels of real estate the "Temple block," valued at $500,000, was taken possession of by the agents of the Church, then existing as a voluntary religious association, in 1848, when Salt Lake City was first laid out and surveyed, and was in the possession of the Church until it was incorporated, and then as a corporation; that when it was first so taken possession of it was a part of the public domain, and continued to be such until it was entered, with other lands, by the Mayor of Salt Lake City in November, 1871, under the town-site act of Congress of 1867; and that in 1872 the Mayor of Salt Lake City conveyed it to a trustee of the Church corporation, in whom the title remained until the act of Congress of 1887.

7. That what is known as the "Historian's office" and grounds, valued at $20,000, being part of lot 6, block 75, plat A, of Salt Lake City survey, was taken possession of

by Albert P. Rockwood in 1848, as part of the public domain; that it continued to be such up to the 21st of November, 1871, when the town site of Salt Lake City was entered; that in October, 1855, the Church of Jesus Christ of Latter-Day Saints, through its trustee, Brigham Young, purchased Rockwood's claim to the premises, and at its own cost and expense erected a building thereon, which has ever since been known as the Historian's office and residence, large enough to accommodate the Historian's family and furnish an office for the Church Historian; that from 1848 to 1875, twenty-seven years, George A. Smith was the Church Historian and lived in the building with his family, and had the custody of the books, papers, and records of the Church relating to its history and the public acts of its officers and members, where they have always been kept up to the present time, at the cost of the Church, and that said office has been and is necessary for the use of the Historian in the discharge of his duties; that in 1872 Smith obtained title to the premises from the Mayor of Salt Lake City, under the town-site act; that after his death the same was conveyed to his wife and one of his granddaughters, who afterwards conveyed the same to Theodore McKean for a valuable consideration, who has ever since held and now holds the same on a secret trust for the use and benefit of the corporation; that the grounds are immediately west of and adjoining the Gardo House and grounds.

8. That parts of lots three and four in block 88, plat A on Salt Lake City survey (being part of what is known as the "Tithing Office" and grounds), valued at $50,000, was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints, when Salt Lake City was first laid out and surveyed in 1848, and ever since has been used and

occupied by said Church, first, as a voluntary association, and then as a corporation, for receiving and disbursing tithings and voluntary contributions of property; and, that prior to July 1, 1862, buildings and other improvements, of considerable value, had been built thereon by the Church; that at the time the property was first taken possession of by the Church it was a part of the public domain, and continued to be such till the 21st of November, 1871, when the land was entered, along with other lands, under the town-site act, by the Mayor of Salt Lake City.

That Brigham Young, who was then president and trustee in trust for the corporation, claimed the land under the town-site law, and it was conveyed to him by Daniel H. Wells, Mayor of Salt Lake City; that in November, 1873, Brigham Young conveyed it to George A. Smith, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints; that on the death of George A. Smith the legal title vested in Brigham Young as such successor, and the executors of Brigham Young conveyed it to John Taylor, as trustee in trust for the corporation, who, in April, 1878, conveyed the property to Edward Hunter upon a secret trust for the use and benefit of the corporation, who, on April 24, 1878, conveyed it to Robert T. Burton on a similar trust, and that Burton afterwards conveyed it to Preston, Winder and himself as trustees.

9. That the south half of lots 5 and 6 in block 88, Plat A, Salt Lake City survey, valued at $25,000, and being part of what is known as the tithing office and grounds, was possessed and owned as follows: In 1848, Newell K. Whitney, then presiding Bishop of the Church, took possession of said lot 5, and in the same year Horace K. Whitney took possession of lot 6 in said block. Some time during the year 1856 the Church, by its agent, took

possession of the south half of said lots, and placed thereon yards and corrals, and have continued to occupy the same with said yards and corrals down to this time; that in 1871 the Mayor of Salt Lake City entered the town-site of that city in trust for the inhabitants and occupants thereof, and that those lots are a part of the entry; that the Church, by its trustee Brigham Young, filed an application in the proper court for a title to the south half of said lots; that Newell K. Whitney filed an application in court for the south half of lot 5, and Horace K. Whitney filed an application in the same court for the south half of lot 6. The court awarded the title to Brigham Young, as trustee of the Church; that in 1872 Brigham Young, trustee, obtained a deed from the heirs of Newell K. Whitney to the south half of lot 5, and paid $7,000 for it, and at the same time obtained a deed from Horace K. Whitney for the south half of lot 6, and paid him $2,000 for it; that when the act of 1887 was passed Robert T. Burton held the title to this property on a secret trust for the corporation.

10. That all the east half of lot 6, block 75, known as the "Gardo House" and grounds, valued at $50,000, was owned by Brigham Young individually at the time of his death in 1877, was thereafter transferred and conveyed by his executors to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints, for a valuable consideration, pursuant to the powers vested in them by the will of Brigham Young, and that in 1878 Taylor, as trustee in trust, conveyed the same to Theodore McKean on a secret trust for the corporation, who on the 2d of July, 1887, conveyed the same to Preston, Burton, and Winder, to be used, as this deed recites, for a parsonage; that the said Gardo House and grounds were used by John Taylor, president of the Church, for a

residence up to the time of his death, a period of about ten years.

11. That the other real property, described as the "Church farm," valued at $110,000, and the Summit county lands, valued at $30,000, were acquired by the corporation since the 1st of July, 1862, but the legal title was at all times held by individuals in trust for the corporation.

12. "That the said corporation was, in its nature and by its act of incorporation, a religious and charitable corporation, for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said Church, and for the purpose of dispensing charity, subject and according to said principles, practices, teachings, and tenets, and that from the time of the organization of said corporation up to the time of the passage of said act of February the 19th, 1887, it never had any other corporate objects, purposes, and authority; never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized under its act and charter of incorporation to take or hold any personal property or estate of said corporation, except the trustees provided for by said statute of incorporation.

"That the said personal property hereinbefore set out had been accumulated by said late corporation prior to the passage of said act of February the 19th, 1887, and that such accumulation extended over a period of twenty years or more; that prior to and at the time of the passage of said act the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets, and practices of the said late

church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of the corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.

"That certain of the officers of said religious sect regularly ordained, and certain public preachers and teachers of said religious sect, who are in good standing and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February the 19th, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation, and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect.

"That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of or in trust for the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes

of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

"That at the commencement of this suit all of said personal property was in the possession of the said William B. Preston, who held it in trust and for the benefit of said corporation, and that all of the above-described property, real and personal, is now in the possession of Frank H. Dyer, receiver of this court."

13. That block 87, with the buildings thereon, at the time of the passage of the act of 1887, viz., the Temple, the Tabernacle, and the Assembly Hall, were used exclusively for the worship of God, according to the doctrines and tenets of the Church of Jesus Christ of Latter-Day Saints.

That proceedings have been instituted, by the consent and advice of the Supreme Court, by information, in the district court, to forfeit and escheat to the United States all the real property except block 87.

Before stating the substance of the decree I will call the attention of the Court to the fact that this act of 1887 is sometimes referred to as the act of February 19, 1887, and sometimes as the act of March 3, 1887. The facts are these: The act was passed by Congress on the 19th of February. It was submitted to the President, who kept it beyond the constitutional period, and it became a law because he failed to veto or return it to the house in which it had originated. The question arose as to whether it took effect on the 19th of February or on the 3d of March, at the expiration of the ten days within which he was authorized to return it. As a question of law, there can be no doubt that the act went into force on the 3d of March, 1887, and the point is so clear that I do not propose to argue it.

DECREE.

1. That on the 3d of March, 1887, the corporation was dissolved, and since then has had no corporate existence.

2. That the deeds of Taylor, McKean, and Burton conveying the Temple block, Gardo House, and Tithing office, and Historian office property to the trustees named in those deeds were void and decreed cancelled.

3. Setting apart the Temple block, being block 87, "to the voluntary religious worshippers and unincorporated sect and body known as the Church of Jesus Christ of Latter-Day Saints * * * for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body."

That is, the court, by direction of Congress, sets apart to these unincorporated individuals, who composed the corporation before its alleged dissolution, this property, to be used for the purpose of promoting the principles and tenets of their sect, because of which principles and tenets the court, in the same decree, escheats to the United States all the personal property, upon the ground that it would be devoted to an immoral purpose if it remained with them.

4. Denying the petitions of Preston, Burton, and Winder to set apart certain portions of real estate to them, and decreeing that no part of said real estate has been used as a parsonage.

5. Decreeing that the legal title to all the real estate set out in the findings of facts was acquired by the corporation subsequent to July 1, 1862, and that prior to said date neither the corporation nor its trustees had any legal title or estate in any of it.

6. Denying the intervening petitions of Romney, Dinwoody, Watson, and Clark.

7. Decreeing that all the personal property be escheated to the United States, by reason of the dissolution of the corporation and the illegality of the trusts to which it was dedicated at the time of its acquisition.

8. Continuing the receivership and the property in his custody.

THE BUCHANAN EXPEDITION.

I have thus presented the facts which are necessary to be considered in a discussion of these questions, except one matter which has been referred to by the Attorney-General in the appendix to his brief, though whether presented as an authority in law or fact I am unable to say. But if it is alleged to constitute one of the facts in this case, I wish to call the attention of the Court to it, because it misrepresents, as I understand it, the facts of history. It is found at page 66 of the Government brief. If your Honors please, some of us are old enough to know something about the Utah expedition of 1857, sent out by Secretary Floyd under charge of Albert Sydney Johnston, Mr. Buchanan being then President of the United States. This is quoted from a report made by the Chairman of the Judiciary Committee of the House of Representatives in favor of the passage of the very bill under which this suit is brought.

Mr. Justice HARLAN. Where do you read from?

Mr. BROADHEAD. Page 66 of the Government brief. At the bottom of the page it is said:

"President Buchanan further said in his message to Congress of December 8, 1857:

"'Whilst Governor Young has been both governor and superintendent of Indian affairs * * * he has been at the same time, head of the Church called the "Latter-Day Saints," and professes to govern its members and dis-

pose of their property by direct inspiration and authority from the Almighty. His power has been, therefore, absolute over the Church and State.'

"And again," quoting from Mr. Buchanan:

"'All the officers of the United States, judicial and executive, with the exception of two Indian agents, have found it necessary for their personal safety to withdraw from the Territory, and there no longer remains any government in Utah but the despotism of Brigham Young.'

"And Secretary Floyd, in his report from the War Department, said:

"'From the first hour they fixed themselves in that remote and almost inaccessible region of our territory, from which they are now sending defiance to the sovereign power, their whole plan has been to prepare for a successful secession from the authority of the United States, and a permanent establishment of their own.'"

Mr. Justice HARLAN. On what point is that quoted?

Mr. BROADHEAD. I do not know; but it is here quoted by the Government, and I only wish to say in reference to the facts stated, that they are not founded upon the truths of history. If an examination had been made of the archives of the Government in this Capitol a different state of things would have been found. If the Court thinks I ought not to refer to it I will say nothing more about it.

Mr. Justice HARLAN. No, I do not say that; I only want to know to what it refers.

Mr. BROADHEAD. I do not know why they have presented it unless it be to excite prejudice or something of that kind. But these remarks of Mr. Secretary Floyd upon *secession* I think have very little reference to the issues in this case.

The facts are, that the expedition was sent out before any official investigation had been made, and upon information given by two individuals whose statements proved to be false, and the proof of their falsity can be had from

the archives of this Government. This expedition, under the command of Gen. Albert Sydney Johnston, started for Salt Lake City in the spring or summer of 1857. Leading newspapers affirmed that Mr. Buchanan had committed a blunder in sending out this expedition at an expense of several millions of dollars, without sufficient inquiry as to the necessity of such a movement. Col. Kane, of Philadelphia, a personal friend of the President, having become acquainted with some of the leaders of the Mormon Church when they were encamped in their winter quarters at Council Bluffs, in the winter of 1846–47—just before their emigration to Utah—offered his services to go as a special messenger or commissioner to Salt Lake City, ascertain the true condition of affairs at that place and act as a mediator, if it became necessary, in settling the differences which seemed to exist between the Mormons and the United States Government. Brigham Young was then Acting-Governor of Utah Territory, having, after the expiration of his term of office under the appointment made by President Fillmore, been reappointed to the same office by President Pierce, and having held the office during the whole of Pierce's administration. The army, under the command of Johnston, was then encamped in winter quarters at Fort Bridger.

In the first week of January, 1858, Col. Kane took passage at New York on a California steamer for Panama; on reaching the Pacific coast he went overland to San Bernardino, in Southern California, where there was a Mormon settlement; was furnished an escort to Salt Lake City, where he arrived in February; had a consultation with Brigham Young and other leading Mormons, and found that they were not hostile to the Government, but did not propose to be butchered without a cause, in consequence of the false representations of their enemies in the

Territory. The result was that Col. Kane left Salt Lake for Fort Bridger and saw Alfred Cumming, who had been appointed Governor of Utah Territory to take the place of Brigham Young, and who was with the army, to be installed as Governor by military force if it became necessary. He was induced by Kane to trust himself within the Mormon lines under a Mormon escort. He left the camp in company with Col. Kane; as soon as they passed the lines of the United States Army they were met by a Mormon escort of militia; he was welcomed as Governor of the Territory with military honors. They entered Salt Lake City escorted by the Mayor, Aldermen, and prominent citizens, and the report made by Governor Cumming afterwards, to the authorities at Washington, shows the falsity of the grounds upon which this expedition was ordered. That Secretary Floyd and President Buchanan said what they are quoted as having said is no doubt true; but if subsequent events show that they were mistaken, that the information given them was incorrect, and that an examination of the public records here would prove it, then reference to those remarks is wrong, and it is unfair and unjust to saddle this people with offenses which they never committed.

ARGUMENT.

Mr. BROADHEAD. Now, if your Honors please, I begin to discuss the questions of law involved in this case. It is claimed here that in 1887, more than thirty-six years after the passage of the act of the Territorial Legislature incorporating the Church of Jesus Christ of Latter-Day Saints, the Congress of the United States had the power, by a simple act of disapproval, to wipe that corporation out of existence and authorize a court to appoint a receiver to take charge

of all its property, and then to turn it over to the Government of the United States, because the original purpose for which the corporation was organized was alleged to be an unlawful one.

This brings up the question of the constitutionality of the act of 1887 and the act of 1862. It is too late now, as the late lamented Chief Justice well said, to deny the power of Congress to legislate for the Territories. It is admitted in all its force. There is no question but that, so far as the political rights of the people of the Territories are concerned, they are entirely subordinate and subject to the Congress of the United States. Congress may fix the qualifications of voters, it may provide test oaths for offices of honor and trust, it may do almost anything that has reference simply to the political rights of the people of the Territories.

The Chief Justice, in the case of the National Bank *v.* Yankton (101 U. S., 132), said:

"It is certainly now too late to doubt the power of Congress to govern the Territories. The Territories are but political subdivisions of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities. But Congress is supreme for the purposes of this department of its governmental authority, and has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution."

And further, in the same case, he says:

"Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government."

And in the case of Murphy *v.* Ramsay (114 U. S., 44), the latest opinion, I believe, on this subject, Mr. Justice Matthews, delivering the opinion of the Court, says:

"The people of the United States, as sovereign owners of the national Territories, have the supreme power over them and their inhabitants. In the exercise of this sovereign dominion they are represented by the Government of the United States, subject only to such restrictions as are expressed in the Constitution, or necessarily implied in its terms, or in the purposes and objects of the power itself; for it may well be admitted in respect to these, as to every power of society over its members, that it is not absolute and unlimited."

This court has announced the same doctrine in other cases. It is to this effect: That, so far as the political power is concerned over the Territories and over the mere political rights of the citizens, the General Government is supreme, and Congress may exercise the same legislative power, by virtue of the authority given it by the people of the United States, that the people of any particular State may authorize its legislature to exercise over the people of that State. Congress, then, stands in the same relation to the Territories that the legislature of a State stands in relation to that State. The one is authorized to act by the people of all the United States; the other is authorized to act by the people of the particular State. But, if your Honors please, this applies only to political rights, and is derived, I think, as Mr. Chief-Justice Marshall once said—and I can see no other reason for it—from the power to acquire territory.

It is the territory of the United States. It belongs to the people of the United States. Therefore, the people of the United States, through their representatives, may legislate in regard to it. The other clause of the Constitution in regard to the disposition of territory and other property, it seems to me, has no relation to this subject of political authority whatever. They may, in regard to these political rights, exercise power over the people of all the Territories, and different power over the people of different Territories, because there is nothing requiring uniformity of legislation in regard to the people of the Territories. There may be a different qualification in regard to the right of suffrage in one Territory from that to be exercised in another. There may be a different system of voting and a different mode for the appointment or the election of officers in one Territory from that prescribed in another. Such legislation has been enacted by Congress, and I think the authority for it never has been questioned by this Court.

But when we come to consider the *civil* rights, the personal rights, of individuals, the case is entirely different. Congress has absolute legislative power, so far as is consistent with the theory of our Government and the limitations of the Federal Constitution, over the political rights of the people of a Territory. But it cannot violate those fundamental principles of the Constitution by which the civil or personal rights of every citizen are guarded. It cannot disregard the provisions for the writ of *habeas corpus*, nor the right guaranteed in that declaration of the Constitution which says that no person shall be deprived of life, liberty, or property, without due process of law, nor the right of trial by jury, nor any of those fundamental rights which are named as exceptions in the Constitution, including also some rights which are not named, because

the power of legislation in this country is not an absolute power. Congress has not the power of the British Parliament. And when this Court has said, as it has done frequently, that the legislatures of the different States possessed the same power as the Parliament of Great Britain, except as restricted by the provisions of the Constitution, that is true; but it has reference simply to legitimate legislative power, not to any absolute power; for instance, not to pass *ex post facto* laws, nor to do anything that is forbidden by the principles which underlie our political system. In the very case to which I last referred the Court says:

"The people of the United States are represented by the Government of the United States, subject only to such restrictions as are expressed in the Constitution or necessarily implied in its terms, or in the purposes and objects of the power itself; for it may well be admitted in respect to these, as to every power of society over its members, that it is not absolute and unlimited."

And further on in the same opinion the Court says:

"Personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty, which restrain all the agencies of Government, State and national."

And in the Sinking Fund cases (99 U. S., 718) this Court has said:

"The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons, or corporations, of property without due process of law. The

United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that that term implies, as it would be if the repudiator had been a State, or a municipality, or a citizen." 99 U. S., 718.

ANNULLING POWER OF CONGRESS.

Now, these being well recognized and universally accepted propositions, the question arises in this case whether the power reserved by the Congress of the United States, in establishing a territorial government, to disapprove the acts of the territorial legislature, authorizes them to disapprove and annul a charter of incorporation granted by it. The provision is contained in the sixth section of the organic act of the Territory, passed by the Congress of the United States in 1850, which reads as follows:

"SECTION 6. *And be it further enacted*, That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect."

An act of Congress, passed in 1844, I think, provided that the secretary of the Territory should, at the expiration of each session of the Territorial Legislature, prepare within thirty days a copy of the journal and laws passed by the Territorial Legislature, and transmit one copy to the

President of the United States, and two copies to the President of the Senate and the Speaker of the House for the use of Congress. That was the law in force when this territorial act was passed.

Now, the question is, what is the meaning and effect of the reservation contained in the 6th section of the organic act of the Territory of Utah? There is no question whatever that when a corporation has been created by act of any legislature, if there is a reservation contained in the charter itself, or in any general law on the subject of corporations existing at the time the corporation is created, it becomes a part of the contract made between the Government and the corporation, by which the Government reserves to itself the power to set aside and annul that contract, or to amend or change it.

But it is claimed here that this general power reserved by the Congress of the United States, to disapprove acts of the Territorial Legislature, constituted a part of the contract made between the Government and the corporation at the time of the granting of the charter.

The Territory of Utah at the time this charter was affirmed by its Territorial Legislature, was a political organism constituted by the authority of the Congress of the United States, with power to pass all laws on general subjects of legislation, consistent with the Constitution of the United States, as for the improvement of highways, for the building of court-houses, for the erection of jails and penitentiaries, and for anything connected with the management of the territorial government, over which the control was given to it by Congress.

Mr. Justice HARLAN. Suppose this charter had been laid before Congress, and that Congress had in terms by an act said, "We will disapprove this act of incorporation." What then?

Mr. BROADHEAD. Certainly, if that disapproval had taken place before the organization of the corporation there is no question but it would have made the territorial act invalid. But I would say, further, in regard to this question, that in all the cases in which decisions have been rendered in this Court sustaining the dissolution of a corporation, and they are numerous, there has been a special reservation in the charter itself, or in some general law on the subject of *corporations*, that existed at the time the charter was created. In other words, this is a peculiar kind of legislation. It is something more than a law, or something less than a law. It is not a law in its general sense, which is a rule of action for all the people of the Territory. But it is an executed contract, made, just as a municipal authority, vested with powers of legislation over any particular subject, might make in the management of the affairs of the municipality; for preserving the health, the comfort, the convenience of its citizens. Would it do to say that if a municipal corporation, county, or city, under such powers as may have been given them when the corporation was created, had made a contract for the erection of a public building, and that building had been completed—the work done but not paid for, that the supreme government of a State, whether it be Congress or a State Legislature, could set aside that contract, or any part of it, by repealing the charter? I say this granting of a charter is a peculiar subject of legislation, and therefore these restrictions are so often contained in the charters of corporations. Because the charter when accepted becomes a contract. A general law is a rule of conduct for the whole community. But when a charter of incorporation is granted, and the State desires to place restrictions upon the grant, it says to the being that is about to be created: "We are going to make

a contract with you,"—for it has been decided to be a contract by all the decisions of the courts, "but we will reserve the power to amend, to alter, to rescind." There is no need of saying this upon the passage of a general law, because a general law does not apply to any special number of individuals, nor give them any special rights or franchises. A charter gives special rights and privileges for a consideration deemed valuable by the State; a general law imposes obligations upon all citizens alike, and upon all who may become citizens of the State. Chief-Justice Marshall (4 Wheaton, 637), says:

"The objects for which a corporation is created are universally such as the Government wishes to promote. They are deemed beneficial to the country, and this benefit constitutes the consideration of the grant."

In the Pennsylvania College cases, 13 Wall., 212; Greenwood *v.* Union Freight Company, 105 U. S., 15; the Railroad Co. *v.* Georgia, 98 U. S., 364; Miller *v.* State, 15 Wall., 488; Holyoke *v.* Lyman, 15 Wall., 500; St. Peter's Catholic Congregation *v.* The German Catholic Congregation, 104 Illinois, 440; Tomlinson *v.* Jessup; The Chesapeake & Ohio R.R. *v.* Miller, and a number of other cases that might be referred to, it has been held that wherever, in the creation of a corporation, there is any reservation contained in a charter itself, or in any general law on the subject of corporations, to the effect that it may be altered, amended, or repealed, that general law or that provision in the charter forms a part of the contract, under which the Government may amend, or alter, or change, or repeal, but these reservations have always referred to incorporating acts or general laws relating to corporations specifically.

Mr. Justice GRAY. I understood you to say, some time

ago, that you considered the Territories to be analogous in their position to the Congress to the position of counties to the State Legislature. Are any of these cases that you cite cases where a subordinate legislative power, whose acts are subject to disapproval by a paramount legislative power, as for illustration, the council of a municipality that is authorized to do something which is subject to approval or disapproval by the laws of a State, has been held to have granted anything irrevocably, so far as the superior power is concerned?

Mr. BROADHEAD. No, sir; I think none of these authorities are cases of that kind. The Congress of the United States and the legislatures of the different States have the power, by virtue of their sovereignty, to repeal, alter, or amend all general laws at pleasure. There is no question about that. But that does not apply to an act which is not only in the nature of a law, but is also a contract between the State as represented by the municipality and an individual person, whether natural or artificial. Every legislature has the power to change its laws from time to time. One legislature cannot bind another by a general law. That is an old doctrine in this country. But no legislature can violate a contract which the State has made, through it as an agent, with an individual, unless there is a reservation in regard to the subject-matter of that contract at the time it was entered into.

Mr. Justice HARLAN. Do you mean to say that Congress could not, in terms, have repealed this act of incorporation?

Mr. BRODHEAD. I say Congress could not have repealed this act of incorporation, because there is no reserved right to repeal. The Chief Justice, in delivering the opinion in the Yankton case, 101 U. S., said:

"In the organic act of Dakota there was no express

reservation of power in Congress to amend the acts of the Territorial Legislature, nor was it necessary. Such a power is an incident of sovereignty, and continues until granted away."

It was not necessary that there should be such a reservation. There is no question about that; in other words the power of Congress would be just as great without this reservation as with it, and if the reservation adds nothing to the existing power, it must refer to general legislation. But what did this reservation mean? Your Honors will recollect that the question has arisen, not only in the political history of the country but in its judicial history, as to what is the power of the people of a particular Territory over their own affairs. The doctrine of squatter-sovereignty was proclaimed and defended in this country strongly, but this Court has said, and the Congress of the United States has said, that there is no such doctrine. In other words, when the Congress of the United States organized the Territory and gave it a charter—the organic act authorizing the Territorial Legislature, as its agent for the time being, to legislate for the people of the Territory and to take care of their interests, it said to them: "You do not possess the power that a State would have; you are subject to the Government of the United States; although you are a political organism within the limits of this portion of the territory of the United States, you are not a State; and we want you to understand that the Congress of the United States can, in the language of this Court in the Yankton case, make a void act valid and a valid act void." In other words, it has supreme legislative control over the people of the Territory and the Territorial Legislature. But does it follow because Congress has so declared to the people of the Territory that they do not possess the power of the people of a State, over whose legislation Congress cannot interfere

at all, and that they are subject at all times to the control of the United States, that when they are given authority over "all rightful subjects of legislation," which includes the right to grant a charter or make any other contract, Congress has reserved the power to disapprove that contract? Congress simply retained the supervising and legislative control over the people of the Territory in a general way and in regard to general laws. It may repeal such acts of the Territorial Legislature as it might repeal its own acts. But because the Congress of the United States may repeal its own acts passed by a former Congress, does it follow that it may repeal a vested franchise to an individual, which may involve property rights? Does it follow that it can take back what it has given, or that it can take back, as in this case, what it has authorized to be given? There is no question that the rightful subject of legislation includes the right to pass acts of incorporation, and to vest the Territorial Legislature with the power to make contracts. I do not confine it to acts of incorporation. It certainly may make contracts, because it represents the political organism which has been constituted by the organic act of the Congress of the United States. It is there to manage the affairs of the Territory, to see that its citizens are taken care of, that its roads are open, that water privileges are protected, that houses are built for public use, and that penitentiaries and jails are provided. It can manage all the affairs of the Territory, because it has the control, under this power of general legislation, over all rightful subjects of legislation, to do those things, and because it is the representative body authorized to act for the people of the Territory.

Can Congress, then, by the simple declaration that it disapproves an act, after a period of more than thirty-six years have elapsed since its passage, make that contract

void? If it is a contract at all, it vests the corporation with property, with franchises (which are a species of property), with the right to acquire property, with the right to sue and be sued—it gives them all the privileges of a corporation. I say, then, that the Congress of the United States has no authority, after having authorized the Legislative Assembly of the Territory to exercise all rightful powers of legislation, and the latter having granted a charter of incorporation which was accepted, by a simple declaration of disapproval to dissolve that corporation.

In concluding what I have to say in regard to the construction of the sixth section of the organic act of the Territory of Utah, I will refer your Honors to what has been said by this Court in the case of Clinton *v.* Englebrecht (13 Wallace, 446) on the subject of implied approval of a territorial act. The Court says:

"In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute-book for more than 12 years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws on or before the first of the next December in each year. The simple disapproval by Congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved of by that body."

With one illustration I will leave this part of the question. Suppose the Congress of the United States, in the organic act of the Territory, had provided that all territorial acts should receive the approval of Congress before they became laws. The Territorial Legislature passes two laws: one a charter of incorporation, the other a law on the subject of marriage and divorce, or any other general law. They are both submitted to Congress pursuant to

the provisions of the organic act, and they both receive the approval of Congress and become laws of the Territory. There can be no question that, under the general power vested in the Congress of the United States, the general law may be repealed in spite of the Congressional approval. But there is no question about the other proposition, that the special act of incorporation may not be repealed after it has been approved by Congress. Congress has the general legislative power to make void acts valid and valid acts void, in the language of this Court, yet if Congress had approved the act creating a corporation in the Territory, that charter could not be disapproved by any subsequent act of Congress, because it would have approved an act making a contract, which is beyond the power of Congress to revoke. But I pass from that question.

The COURT. Do you say that the laws of the Territory did not take effect until Congress approved them?

Mr. BROADHEAD. No, sir; I did not say that. I only supposed the case by way of illustration.

The COURT. As I understand the organic act of the Territory, the laws of the Legislative Assembly are valid until they are rejected by Congress?

Mr. BROADHEAD. Yes, sir; that is the law now, and has been the general law.

The COURT. You have spoken several times about the power of Congress to pass a law which repeals or sets aside a charter, and you have spoken of it in a way which implies to my mind that you think Congress is governed by the same rule which applies to the States, that a State can pass no law impairing the obligation of a contract.

Mr. BROADHEAD. I say so.

The COURT. I do not understand that to be the law. On the contrary, I think it has been decided, over and over again, that that provision of the Constitution of the United

States is a limitation upon the power of the States; and while I do not know that Congress may, in all cases, pass a law impairing the obligation of a contract, I am very clear that that provision of the Constitution does not apply to Congress.

Mr. BROADHEAD. I have no doubt of that, if your Honor please, and my argument has not been in conflict with that idea at all.

The COURT. I just make that suggestion to you.

CONGRESS CANNOT IMPAIR CONTRACTS.

Mr. BROADHEAD. This Court has said there is no doubt that the clause of the Constitution of the United States which says that no State shall pass any law impairing the obligation of contracts does not apply to the Congress of the United States; but this Court has also said, and especially in the Sinking Fund cases, in the opinion delivered by the Chief Justice, that while that clause of the Constitution does not apply to the Congress of the United States, yet the principles which underlie it do apply to the Congress of the United States; that the Congress of the United States, when it has granted a franchise, or has given a right to a tract of land, cannot take it back. The granting of a franchise is the same thing as the granting of any other property. This Court has held and your Honor has held that the Congress of the United States cannot take the property of A and give it to B. This Court has held that the Congress of the United States cannot, when it has made a grant of a tract of land, take that land back from the party to whom it was granted, and that the principle which underlies the declaration of the Constitution of the United States, that no State shall pass any law impairing the obligation of contracts, is equally obligatory upon the Congress of the United States.

The COURT. The circumstances under which Congress might interfere in regard to the rights or contracts founded on the legislation of that body has not been defined by this Court, and is an open question to-day.

Mr. BROADHEAD. I have quoted in my brief from the decisions in a number of cases in which the opinion of this Court is expressed upon that question. I will not detain the Court by reading them, but ask your Honors to give them a careful examination.

The COURT. Is there a provision in the organic act of Utah stating within what time the Congress may disaffirm any legislation or within what time it must exercise that authority?

Mr. BROADHEAD. There is no time mentioned in the organic act of the Territory within which Congress may disapprove.

The COURT. Does it take effect from the time the original law is passed?

Mr. BROADHEAD. I think that this Court has held, in the case of the Miners' Bank of Dubuque *v.* The State of Iowa, if any rights accrue prior to the disapproval of any act of that kind they would be respected.

The COURT. Not to interrupt you again, I did not quite hear what you said about the provision in the organic law of the Territory providing how soon the secretary should transmit the acts of the Territory to Congress. Are those required to be transmitted at the next session of Congress?

Mr. BROADHEAD. Yes, sir; the act of 1844 (sec. 1844 of the Revised Statutes), which I refer to in my brief, and which is the general law in regard to the Territories, provides that after the adjournment of each session of a Territorial Legislature the secretary of that Territory shall, within thirty days, cause to be printed copies of the journal and laws passed by that Territorial Legislature, one copy

of which shall be transmitted and delivered to the President of the United States and two copies each to the President of the Senate and the Speaker of the House of Representatives for the use of Congress. That is the language of the act, and that was the law long before this organic act was passed, and it continues to be the law now.

The COURT. Just one other question. I suppose it is possible—I do not know whether that has ever been raised—that this system of reserving the power to Congress to disapprove the acts of the Territories might have been more or less derived, or modelled from, or suggested by the practice that prevailed before the Declaration of Independence, by which, in a great many Colonial charters, the power is reserved to disapprove of the action of the provincial assemblies. In Massachusetts, I think, that disapproval was required to take place within three years, and the Court settled the question.

Mr. BROADHEAD. I do not recollect in regard to that historical fact, but there is no time fixed in the organic act of Utah for disapproval. This question has only been incidentally before this Court once; that was in the case I have just referred to of the Miners' Bank of Dubuque *v.* The State of Iowa. The facts were these: The Territory of Wisconsin was organized, a part of which subsequently became the Territory of Iowa. Wisconsin was the first Territory organized; it was organized, I think, in 1846. This same provision, reserving the power to disapprove, was contained in the organic act of Wisconsin Territory. Afterwards Iowa was organized out of the Territory of Wisconsin, and the same provision was contained in the organic act of Iowa. The Legislature of Wisconsin chartered the Miners' Bank of Dubuque, Dubuque then being in the Territory of Wisconsin. It was submitted to Congress under the general territorial law. The act chartering

the bank was passed in November. The following March, during the first session of Congress held after the passage of the act, the act was disapproved by Congress, except in regard to certain provisions, and it was further declared that the Territorial Legislature should have the power to repeal, alter, or amend it under certain circumstances. Afterwards the Territorial Legislature of Iowa passed a law repealing the charter, under the authority of Congress. Then the State of Iowa was organized, and the question came up, having been tried in the territorial courts and transferred to the courts of the State of Iowa, and it was decided by the supreme court of the State of Iowa that the act of a Territorial Legislature was valid. From that decision an appeal was taken to the Supreme Court of the United States under the judiciary act which provides for writs of error to the supreme court of the respective States in certain cases, particularly in reference to the construction of a State law alleged to be in violation of the Constitution of the United States. The Supreme Court of the United States decided that they had no jurisdiction; that the decision of the supreme court of Iowa was not upon the construction of a State law of Iowa, but an act of the Territory of Iowa. They confined themselves strictly to the literal construction of the judiciary act, which only enables the Supreme Court of the United States to entertain writs of error in regard to the decisions of State supreme courts where their decisions have been upon the construction of State statutes alleged to be in conflict with the Constitution of the United States. The Court says that this was simply an act of the Territorial Legislature, and therefore they would not entertain jurisdiction.

The COURT. Where is that case reported?

Mr. BROADHEAD. In 12 Howard, page 1; The Miners' Bank of Dubuque *v.* The State of Iowa. I haven't it on

my brief, but it is referred to in the Government's brief. But there was no decision in that case, in regard to the construction of this clause of the organic act, not even a dictum. The point decided was that this Court had no jurisdiction at all because it was not the act of a State Legislature, nor the act of Congress, but simply the act of a Territorial Legislature.

The COURT. Has Congress exercised this power of disapproval as shown by its own journals?

Mr. BROADHEAD. I do not know; I have not examined for the purpose of ascertaining. But in the case of Clinton *v.* Englebrecht, which I have already cited, this Court holds that the presumption will be, after a certain lapse of time, that the act has been approved.

CONSTRUCTION OF THE ACT OF 1862.

I am afraid I will not be able to cover all the points in this important case in the time allotted to me. The proposition I want to call your attention to next is upon the construction of the act of Congress of July 1, 1862. I maintain that a fair construction of the second section of that act shows that the Congress of the United States has by implication approved this charter. If the approval of Congress may be fairly implied by any of its acts, then, having the Congressional sanction, the charter became a valid act which Congress could not afterwards disapprove or amend without impairing the obligation of the grant contained in the charter. The title of the act is, "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah." The second section of the act reads as follows:

"SECTION 2. *And be it further enacted*, That the following ordinance of the provisional government of the State of Deseret, so called, namely, 'An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints, passed February 8th, in the year 1851, and adopted, re-enacted, and made valid by the Governor and Legislative Assembly of the Territory of Utah by an act passed January 19th, in the year 1855, entitled an "Act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication and distribution,"' and all other acts and parts of acts heretofore passed by said Legislative Assembly of the Territory of Utah which establish, support, maintain, shield, or countenance polygamy be, and the same hereby are, disapproved and annulled."

This first clause of the section shows that in the mind of the legislator this act of incorporation did support, maintain, shield, and countenance polygamy. It declares that that act and all other acts which shield, maintain, or countenance polygamy, are disapproved and annulled. But then comes the proviso, which is intended, of course, to qualify and explain what goes before. The first clause of the section is a positive declaration that all acts which countenance polygamy, including this, which, in the mind of the legislator, did countenance polygamy, were disapproved and annulled. The proviso reads as follows:

"*Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned [that is, the ordinance of incorporation], nor with the right to worship God according to the dictates of conscience, but only to annul the acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances."

Now, why this proviso? If the intention of Congress had been to disincorporate that corporation, the first clause of that section is all-sufficient. It disapproves and annuls that act of incorporation because, in the opinion of the law-makers, it countenanced polygamy. But the proviso is that the act shall be so limited as not to affect or interfere with the right of property legally acquired, nor with the right to worship God according to the dictates of conscience, but only to annul the acts and laws which establish, maintain, protect, or countenance the practice of polygamy. And a fair construction of that act, it seems to me, is that it repeals so much, and only so much, of the act of incorporation as countenanced polygamy. The act itself is entitled "An act to punish and prevent the practice of polygamy." I want to call your Honors' attention to the declaration in the first section, that this act of incorporation is repealed, provided the property acquired shall be retained, and provided that this act is only intended to annul the acts and laws which establish, maintain, protect, or countenance polygamy, but not to interfere with the right to worship God according to the dictates of conscience. Of course Congress did not intend by that broad declaration to say that the people of Utah, or the people of any other Territory, should be allowed the privilege of worshipping God according to the dictates of conscience. It did not require any act of Congress to establish that right. It belongs to the people of a Territory and of a State, under the principles of our Government and according to the declaration of our fundamental law.

In the third section of this charter it is declared that as said Church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," etc., therefore the power and authority is given to make rules

and regulations for the government of the Church, and this provision is severely criticised in the Government's brief. What does it mean? It simply means that inasmuch as the doctrine prevails in this country that all people may worship God according to the dictates of their conscience, therefore this charter gives the Church the power, under that general authority, to make their own regulations in regard to the government of their Church. When the Congress, in the act of 1862, said in this proviso that this act shall be so limited and construed as not to affect or interfere with the right of property under the ordinance heretofore mentioned, nor with the right to worship God according to the dictates of conscience, it did not intend to guarantee to those people the right simply to worship God according to the dictates of conscience. That would have been folly. Congress knew, as everybody knew, that this is a right which did not require an act of Congress to secure. But this is the initial, the introductory clause of the third section of the charter, which lays it down as a fundamental doctrine, under which every religious society ought to be authorized to make its own rules and regulations in regard to the conduct of the members of that Church. And when it is said that this act of 1862 shall not be so construed as to interfere with the right of property legally acquired or with the right to worship God according to the dictates of conscience, it means that the right to make rules for the government of the Church, which springs from the other right, should not be interfered with.

The third section of the act of 1862 also provides that it shall not be lawful for any corporation or association for religious or charitable purposes to hold real estate of a greater value than $50,000, provided existing vested rights in real estate shall not be impaired by the provisions of this sec-

tion. This law of 1862 especially referred to Utah Territory and the Church which had been organized under the ordinance in question. To whom were reserved these vested rights? To whom were reserved the rights to property legally acquired unless it were the corporation? The third section recognizes it as a corporation when it says that no religious or charitable corporation shall hold more than $50,000 worth of real estate, because this corporation was specially the subject of legislation. And this section further declares that existing vested rights in real estate shall not be impaired. Who had acquired the property before that, which was reserved under the second clause of the second section of this act, or the real estate referred to in the third section? Why, this corporation. Then I say that a fair construction of the act of 1862 is that the Congress of the United States intended to repeal, and did repeal, only so much of the act creating this corporation as would, impliedly or otherwise, vest them with the power to include, as one of their religious rules, the system of polygamy. The title of the act sustains this view.

It had been claimed that under the provisions of this charter and the declarations contained in its third section the doctrine of polygamy had been recognized by the act. Congress says, If so, we will repeal that much of the act. But they do not annul the charter of the corporation. It would have been very easy to have left the third section of the act with the first clause standing as it does without any proviso. The proviso certainly means something. It can only mean that the corporation shall remain as a religious and charitable corporation, but it shall not hereafter acquire or hold more than $50,000 worth of real estate, and by no construction of its religious creed shall it be authorized to countenance the doctrine of polygamy.

That is a sensible and reasonable construction. Now, if Congress passes an act disapproving or annulling one part of an act, the fair implication, according to the fundamental rules of statutory construction, is that the balance of the act is approved; certainly it is not disapproved. And if this charter was approved by the act of 1862, except in regard to polygamy, how could it afterwards be disapproved or annulled without impairing the corporation's franchises, taking away its property? The Government of the United States says that this was a valid and legal corporation down to the time of the passage of the act of 1887, and we admit it in the answer, but of course this Court will determine the question as a legal proposition.

CONSTRUCTION OF THE ACT OF 1887.

What is the true construction of the 17th section of the act of 1887, under which this suit is instituted? It reads as follows:

"SEC. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called General Assembly of the State of Deseret, incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, so far as it may now have, or pretend to have, any legal existence, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section, and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to

effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith, and burial-grounds, and of the description mentioned in the proviso to section thirteen of this act, and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity."

Now, if the Congress of the United States, in 1887, thirty-six years after the charter was granted to this Church and accepted by it, still had the power to disapprove the act of the Territorial Legislature validating the charter, and if by lapse of time it had not lost that right, and if the act of 1862 had not recognized it as a valid act, so as to shut out any subsequent disaffirmance by Congress, all that the Congress could do under this reservation was to disapprove that act. Any other legislation in addition to the act of disapproval was new legislation upon this subject. If it could have disapproved the act at that time it would have left the corporation and its members and its property to be disposed of according to law, or, as the act says, "conformably to law." That applies to the personal property. But the Congress undertook to do more. And in this I say it exercised judicial powers. Of course, if it had not the power to repeal the act of incorporation, the act of repeal was a judicial act. Wherever that power is reserved I admit that the Legislature may exercise it without being obnoxious to the charge of judicial legislation. This act not only disapproves the act of incorporation, but it substantially directs a court to take charge of the property, and set a certain portion of it apart for religious purposes, and dispose of the balance conformably to law. Congress had laid down no rule, had passed no law which would govern a case of this kind;

but in this act it provides what shall be done. It directs a court to set apart certain property.

The COURT. Congress has the power to repeal the organic act, has it not?

Mr. BROADHEAD. There is no doubt about that.

The COURT. If it can do that, then the laws that had been enacted by the Territorial Legislature in the meantime will be exposed to the direction of Congress as to whether they shall stand or be repealed, will they not?

Mr. BROADHEAD. I suppose, if your Honors please, that if the Territorial Legislature of Utah had passed any laws, and the Congress, in its unquestioned power—for I do not deny it—had disorganized the Territory, repealed the organic act, what had been done by the Territorial Legislature, under the authority of Congress, would remain as valid.

The COURT. So far as Congress is restrained by the fifth amendment, viz., that no person shall be deprived of life, liberty, or property, without due process of law?

Mr. BROADHEAD. Exactly.

The COURT. Nor shall private property be taken for public use without just compensation?

Mr. BROADHEAD. That is just what I say. Now suppose Congress had repealed the organic act of the Territory, is there any law of Congress, any law of the United States, that provides what shall become of property acquired by such a corporation under the valid acts of a Territorial Legislature?

Part of the property involved in this suit has been declared to be escheated to the United States. I say there is no law in this country authorizing such a decree. There is no such thing known to the jurisprudence of the United States as the doctrine of escheat. That belongs to the States, which have adopted it in the common law, or by

statutory provisions. But there is no common law known to the Federal jurisprudence. There is no escheat known to the Federal jurisprudence. There is forfeiture, provided by special acts of Congress, when there has been a violation of the internal revenue law, or of the navigation laws. There is forfeiture prescribed by special acts of Congress, but there is no general law on the subject of forfeiture. There is no general law on the subject of escheats. Escheat is a doctrine known only to the common law. Wherever the common law has been adopted in any State of the Union, the doctrine of escheat prevails, regulated as it has been in all the States by special statutory provision; but there is no law of the United States on the subject of escheat. There is no common law known to the Federal jurisprudence; none whatever. But this is a digression, and I will return to what I was saying in regard to the interpretation of this section seventeen.

Judicial Legislation.

I say this is judicial legislation. If the Congress had the right to repeal this charter, and if any general law had existed, applicable to a case of this kind, under which individuals interested might have appeared before the courts of the country and claimed their rights, and had their claims adjudicated before a court of law or equity with or without a jury, it would have been a different thing from the present case in which the Congress, by its simple fiat, declares that this corporation is dissolved; that the supreme court of the Territory of Utah must take its property into custody, and set apart a certain portion of it for religious purposes and dispose of the balance conformably to law. Conformably to what law? By what law is it claimed that a court of equity will undertake to escheat and forfeit either real or personal

property? The act itself does not provide for an escheat of this personal property, nor say what shall be done with it. Is there any such doctrine known to the principles of equity? A court of equity will refuse to carry out or to enforce a contract which is invalid, illegal, or immoral. But it has not been known to the jurisprudence of this country, nor to the jurisprudence of England, or any other country where courts of equity have power, in the absence of any statute on the subject, that a court of equity could seize upon property, confiscate and escheat it, either because it does not belong to anybody and therefore belongs to the government, or because it has been escheated *propter delictum tenentis*. I say there is no such doctrine in this country. I say such an act is judicial legislation.

This Court, in the case of Hurtado *v.* California (110 U. S., 535–536), in the opinion delivered by Mr. Justice Matthews, says:

"It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but 'the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society,' and thus excluding * * * acts of attainder, bills of pains and penalties, *acts of confiscation*, acts reversing judgments, and acts directly transferring one man's estate to another, *legislative judgments and decrees*, and other similar special, partial, and arbitrary exertions of power under the forms of legislation."

In the case of the United States *v.* Klein (13 Wallace, 146), this Court says:

"The Court is required to ascertain the existence of cer-

tain facts, and thereupon to declare that its jurisdiction, on appeal, has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant, and an appeal has been taken to this Court. We are directed to dismiss the appeal if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so, without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the judicial department of the government in cases pending before it? We think not. * * * We must think that *Congress had inadvertently passed the limit which separates the legislative from the judicial power.*"

And so it was in this case. This whole proceeding is based upon the idea that the corporation is dissolved, and that because the corporation is dissolved the property belongs to the United States. The court is directed to wind up the affairs of the corporation, take charge of the property, and turn over certain portions of it to the former owners for religious purposes.

Now, I wish to call your Honors' attention to the opinion of Judge Story on this subject, in the case of Terret *v.* Taylor (9 Cranch).

At the time of the Revolution, the Episcopal Church of Virginia was entitled to receive endowments of land for church purposes, and the minister of the parish held the title as a sole corporation, with power of transmission to his successors, and the churchwardens were a body corporate, with power of guardianship over the personal property. The churches thus held a large amount of land at the time of the Revolution which was confirmed to them by statute of the Legislature, and the act of 1774 made the minister and vestry a corporation by the name of the Protestant

Episcopal Church. The Legislature of Virginia, by statute passed in 1798, attempted to disincorporate the Episcopal churches in that State by repealing all statutes passed for their benefit previous to that time, upon the ground that they were inconsistent with the principles of the State constitution and of religious freedom, claiming that all the property acquired by the Episcopal churches in all the parishes of the State of right belonged to the State, and directing the overseers of the poor in each parish to sell the property and appropriate the proceeds to the use of the poor of the parish.

Mr. Justice Story, in delivering the opinion of the Court in that case, pages 49, 50, 51, and 52, says:

"The free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulchre of the dead. And that these purposes could be better secured and cherished by corporate powers cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations. * * * We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*. * * * The property was, in fact and in law, generally purchased by the parishioners, or acquired by the beneficence of the pious donors, and the title thereto was indefeasibly vested in the churches. It was not in the power of the crown to seize or assume it, nor of the Parliament itself to destroy the grants, unless by the exercise of a power the most arbitrary, oppressive, and unjust. * * * The dissolution of the form of government did not involve in it a dissolution of civil rights. * * * The State itself succeeded only to the rights of the crown, and, we may add, with many a flower of prerogative struck from its hand. The division of an empire creates no forfeiture of previously

vested rights of property, and this principle is equally consonant with the common sense of mankind and the maxims of eternal justice. * * * A private corporation created by the legislature may lose its franchises by a misuse or non-use of them, and they may be resumed by the Government by a judicial judgment upon *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and is a tacit condition annexed to the creation of every such corporation. * * * But that the legislature can repeal statutes creating private corporations, and confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please without the consent or default of the corporators, we are not prepared to admit, and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

So I say, in the language of this Court, that "Congress has passed the limit which separates the legislative from the judicial power," and in this instance its act is void.

To Whom the Property Belongs.

Now as to what becomes of the property. Suppose, if your Honors please, that these two acts of the Legislature are both valid, that the act of 1862 was a lawful exercise of legislative power, and that it did not take away any vested right in this corporation, and suppose the act of 1887 was a valid act of legislative power vested in the Congress of the United States. The vital question after all is, What becomes of the property? Whose property is it? Now it will be remembered that, by the act of 1862, property acquired before the passage of that act was reserved, and

vested rights in property previously acquired were not to be interfered with. It will also be remembered that the same act provided that religious and charitable corporations might hold real property not exceeding $50,000 in value, and that all over that amount should be forfeited, but that existing vested rights in real estate should not be impaired. So that by the declarations of Congress itself in the act of 1862 there was property vested in somebody, not in the United States, but either in the corporation which retained its corporate existence, except in so far as it might have been supposed to countenance by its religious ordinance the doctrine of polygamy, or if the corporation was thereby absolutely and utterly dissolved, these rights were vested in the persons who composed the corporation. The admission that this property does not belong to the United States is contained in the act of 1862, and by a fair construction of that act, only such property as exceeded in value the sum of $50,000, which may have been acquired after the passage of the act of 1862, could be forfeited to the Government, and that, the court says, has been turned over to the district court for the purpose of having proceedings of forfeiture instituted; so that no judgment of forfeiture is asked in regard to the real estate in this case. So far as this Court is concerned, and so far as the Supreme Court of the Territory of Utah is concerned, all they had to do with the real estate was to ascertain what property had been acquired in violation of the provisions of the act of 1862, so as to ascertain what property the corporation or the members of the association had a vested right in. But the judgment of the court below is that there was no vested right in any of this real property; that no such right had been acquired previous to the first of July, 1862, the time of the passage of the act; and that neither the corporation nor its members have any right to the personal property of the Church.

I call your Honors' attention to the language of the decree in this case, to see what the court found. It did not find anything in regard to the real property, except that it had not been acquired previous to the passage of the act of 1862; but in regard to the personal property the decree says: "And it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-Day Saints has by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the trusts to which it was dedicated at its acquisition, and for which it had been used by said late corporation, and by operation of law, become escheated to and the property of the United States of America."

I think I have shown that the property did not become the property of the United States by reason of the dissolution of the corporation. I am not aware of any authority in any judicial decision for that doctrine, even where corporations are created by State legislatures; and the recent decision of the court of appeals of the State of New York, in the Broadway Surface Railroad cases, upon that point holds that the property of the corporation, after it becomes dissolved, goes back to the persons who composed it, or their successors or assigns. I do not think that there can be any question about that.

The COURT. Where is that case reported? Is it referred to in the brief?

Mr. BROADHEAD. Yes, sir. It is reported in volume 18, No. 11, of the Northeastern Reporter. It is the case of The People *v.* O'Brien. The court says:

"It is urgently contended that none of the franchises of the corporation survived its dissolution. * * * If it could be supposed for a moment that this claim was rea-

sonably supported by authority, or maintainable in logic or reason, it would give great cause for alarm. * * * It is a proposition so repugnant to reason and justice, as well as the traditions of the Anglo-Saxon race, in respect to the security of rights of property, that there is little reason to suppose that it will ever receive the sanction of the judiciary. * * * We think that there are no reported cases in which the judgment of the Court has ever taken either the franchises or property of a corporation from its stockholders and creditors, through the exercise of the reserved power of amendment and repeal, or transferred it to other persons or corporations, without provision made for compensation. * * *

"We are of the opinion that the Broadway Surface Railroad Company took an estate in perpetuity in Broadway, through its grant from the city under the authority of the constitution, and the act of the Legislature. It is also well settled authority in this State that such a right constitutes property, within the usual and common signification of that word. * * * It is earnestly contended for the State that such a franchise is a mere license or privilege, enjoyable during the life of the grantee only, and revocable at the will of the State. We believe the proposition to be not only repugnant to justice and reason, but contrary to the uniform course of authority in this country. * * *

"It cannot be necessary at this day to enter upon a discussion in denial of the right of the Government to take from either individuals or corporations any property which they may rightfully have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since *Magna Charta*, and in this country always. It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary avocations of life, by gift, or descent, or by making a profitable use of a franchise granted by the State; it is enough that it has become private property, and it is thus protected by the law of the land."

The COURT. Conceding that that part of the statute is valid which declares that this corporation called the Church of Latter-Day Saints is dissolved, what do you say becomes of it?

Mr. BROADHEAD. That is the question that I am undertaking to discuss.

The COURT. You are stating these leading authorities. I would like to know what your view is; where you are coming to. What do *you* say?

Mr. BROADHEAD. Well, sir, I say unquestionably that the property belongs to the persons who constituted the members of the corporation; and that is substantially what Judge Story says in Terrett *v.* Taylor (9 Cranch), in regard to the property belonging to the Episcopal Church in the State of Virginia. It belongs to those who compose the corporation. I know the objection has been urged that the members of the corporation—the members of the Church—are changing from time to time, and that therefore there are no particular individuals to whom this property can go. But that question is answered in the decision of Chief-Justice Marshall in the Dartmouth College case.

The COURT. Who do you say constitutes this corporation?

Mr. BROADHEAD. We say that all the members of the Mormon Church constitute this corporation and are entitled to that property. Why not? To whom else would it go? We have in these cases the intervening petition filed by George Romney and others, for themselves and other members of the association, to the effect that if the Court should declare the corporation dissolved the property be turned over to the trustees to be used for religious and charitable purposes.

The COURT. About two or three hundred thousand people.

Mr. BROADHEAD. But it is for a charitable purpose. It is vested in the trustees for a charitable use, not solely for religious use. And it must be recollected that although some members of that Church practice the doctrine of polygamy and others do not, yet they are all members of this organization, all members of this Church. According to the finding of the court, not exceeding twenty per cent. of the marriageable members, male and female, which would be only eight per cent. of the whole Mormon population in Utah, have ever been engaged in the actual practice of polygamy. Why shouldn't it go to the members of this Church for the purpose of taking care of the poor, for the purpose of educating their children, for the building of churches, for the erecting of temples, if they choose, as they have already done at an enormous cost of money and property? Now we may think that such expenditures are not very sensible; but is there any reason why these people should be deprived of their property because we differ with them in regard to that matter? So far as polygamy is concerned the Congress of the United States has made it a crime; it has provided for its punishment. The penitentiary of Utah is now full of persons who have been convicted of unlawful cohabitation with their polygamous wives. Is not that enough? Will the Government, strong as it is, admit that it cannot enforce its own laws by punishing offenses that have been made crimes by the provisions of its laws, but that it must, by an act which I say is an act of arbitrary power, take this property away from persons who have acquired and enjoyed it year after year, for the purpose of destroying that organization, the members of which are subject at all times to punishment if they violate the law, and the great majority of whom have never been accused of being lawbreakers? If that law is not strong enough, pass some

other law, but do not by an act of arbitrary power take away this property from these individuals, and thereby punish the innocent thousands for the acts of the few.

The political power of the people of this Territory has been taken from them; the executive and judicial officers are appointed by the President of the United States; the rules of evidence known to the common law and in force in every other Territory and in every State have been perverted; attachments may issue for witnesses without a previous summons; husbands may testify against their wives and wives against their husbands; test oaths are required of jurors which exclude all sympathizing Mormons from the jury-box, and, if under these circumstances the Government cannot suppress polygamy, it cannot be done by robbing these people of their property.

The COURT. Were the beneficiaries of the corporation the whole Mormon Church of Utah, or only the congregation of Salt Lake City?

Mr. BROADHEAD. The whole Mormon Church in Utah. That is, in the Territory as it is defined in the organic act and over which alone the Territorial Legislature had authority when the ordinance was confirmed by it in 1855, and not the State of Deseret, as claimed by the Government. The Church has branches in Salt Lake and in every county of the Territory.

The COURT. Is there anything in the statute under which this proceeding was had which gives the reason for the dissolution of this corporation?

Mr. BROADHEAD. No, sir.

The COURT. Anything said about moral principles?

Mr. BROADHEAD. No, sir; not a word in the act; but the court below makes the finding as to polygamy and the forfeiture of personal property, as I have stated. There is nothing in the act of Congress, nor in any general law

of Congress, which provides that property shall be forfeited because of the commission of the crime of polygamy.

The COURT. This question that you are on now is to me the crucial and troublesome question. Legislative bodies have exercised the right of dissolving corporations always. Sometimes they have good reasons for doing so, and sometimes probably they have not. In Tennessee, some eight or ten years ago, they dissolved the corporation of the city of Memphis, where there was a hundred thousand inhabitants. The Legislature went on to provide what should become of the debts and property of that corporation. Now, the trouble here is about the property.

Mr. BROADHEAD. Was not the city of Memphis a municipal corporation?

The COURT. Yes, sir.

Mr. BROADHEAD. Exactly. Nobody denies the proposition that the State has the power to dissolve any municipal corporation that it has created, because it is a mere arm of the State, after all. The organization of a city is merely providing an arm of the political power of the State, and the power creating it may at any time take it away. But I do not think that there has ever been a judicial decision, or an act of any territorial or State legislature, or of Congress, undertaking to dissolve a private corporation where franchises have been granted without reservations to the individual members of it as a corporation, except the act of the Virginia Legislature, in 1798, which undertook to disincorporate the Episcopal Church; which act was pronounced by this Court arbitrary, illegal, and unconstitutional. I do not think there is a case in this Court, or any other court, where such an act has ever been held valid. Of course, where there is a reservation in the charter, or reservation in the general law, it is a different thing. But if there is to be any force given to the

decision in the Dartmouth College case, which has been attacked, I know, from time to time, but which, notwithstanding, has been followed by this Court implicitly from the time it was delivered down to the present day in numerous decisions—if there is anything in that, then there is property in the franchise of a private corporation which the State cannot take away, and I say what this Court has said in the Sinking Fund cases, that Congress is as much limited as a State in this regard.

Now, as to the other question, that they are a changing body of people. In delivering the opinion of the Dartmouth College case, Chief-Justice Marshall says:

"This is plainly a contract to which the donors, the trustees, and the crown, to whose obligations New Hampshire succeeds, were the original parties. It is a contract made on a valuable consideration; it is a contract for the security and disposition of property; it is a contract on the faith of which real and personal estate has been conveyed to the corporation; it is, then, a contract within the letter of the Constitution, and within its spirit also, unless the the fact that the property is invested by a donor in trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception taking this case out of the prohibition contained in the Constitution.

"On what safe and intelligible ground can this exception stand? There is no expression in the Constitution, no sentiment delivered by its contemporaneous expounders which would justify us in making it. In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the Constitution not warranted by its words? Are contracts of this description of a character to excite so little interest that we must exclude them from the provisions of the Constitution as being unworthy of the attention of those who framed the instrument? Or does public

policy so imperiously demand their remaining exposed to legislative alteration as to compel us, or rather permit us, to say that these words, which were introduced to give stability to contracts, and which in their plain import comprehend this contract, must yet be so construed as to exclude it? Almost all eleemosynary corporations, those which are created for the promotion of religion, of charity, or of education, are of the same character. The law of this case is the law of all. * * * Religion, charity, and education are, in the law of England, legatees or donees capable of receiving bequests or donations in this form. They appear in court and claim or defend by the corporation. Are they of so little estimation in the United States that contracts for their benefit must be excluded from the protection of words which in their natural import include them? Or do such contracts so necessarily require new modelling by the authority of the Legislature, that the ordinary rules of construction must be disregarded in order to leave them exposed to legislative alteration?"

Now the question is, admitting that these acts of Congress are perfectly constitutional and legal, what becomes of the property? Does it belong to the Government of the United States? If so, under what law? There is no provision in the act itself which declares what disposition shall be made of this property; I mean of the personal property. It shall be disposed of, in the language of the act, by the court conformably to law.

The COURT. What does the statute say about the real estate?

Mr. BROADHEAD. The statute says that proceedings shall be instituted by the Attorney-General to forfeit and escheat to the United States all property acquired in violation of the provision of the act of 1862. But there is no prayer for forfeiture of the real estate in this bill; nor is there any decree by the court below in regard to the real property except to declare that it was not property acquired prior

to the first of July, 1862, the date of the passage of the act of Congress which declared that all property in excess of $50,000 should be forfeited, and the denial of the petitions of the trustees claiming it as exempt under the law, but in the findings of the court they say that the real estate is turned over to the district court for the purpose of having proceedings instituted to forfeit it.

The Doctrine of Escheat.

I repeat that there is no such thing known to the jurisprudence of the United States as the doctrine of escheat. That belongs to the States, which have adopted it in the common law, or by statutory provisions. But there is no common law known to the Federal jurisprudence. There is no escheat known to the Federal jnrisprudence.

By the common law, according to Lord Coke, escheats are of two kinds: first, *propter defectum tenentis;* second, *propter delictum tenentis;* the one on account of the failure of heirs to property, the other on account of some fault of the party in possession. But whenever there was any one to take, there was no escheat *propter defectum tenentis.* Equitable estates are not subject to escheat under the common law of England, because there was always somebody to hold. As this doctrine was derived partly from the feudal system, things which do not lie in tenure as a rent charge will not escheat; and at common law an equitable or trust estate would not be ferfeited or escheated either for treason or felony, for the simple reason that there is a trustee in possession. But real estate, or personal property, which is subject to forfeiture on account of some fault of the parties who own it, *propter delictum tenentis* may be called an escheat or forfeiture. Forfeiture, strictly speaking, happens only in cases where there is some fault on the

part of the owner which subjects his property to forfeiture, as in case of conviction for treason or felony.

Now, I say this is the doctrine of the common law, which has never been adopted in this country so far as the Federal jurisdiction is concerned. The first decision on that point is in the case of Wheaton *v.* Peters (8 Peters), in which the Court says: "It is clear there can be no common law of the United States. The common law could be made a part of our Federal system only by legislative adoption." And it has been so held uniformly by this Court, where any Federal court comes to interpret a legal phrase, it goes to the common law to ascertain its meaning. But the system of jurisprudence derived from the statutes and the customs of England, which constitute the common law, is no part of the Federal jurisprudence in this country, and never have been, although it may be made so by law; and, therefore, is not applicable to the Territories, not applicable to any part of the United States which comes within the peculiar and exclusive jurisdiction of Federal tribunals. As a system of Federal jurisprudence, it does not exist in this country. This act of 1887 itself does not provide for the forfeiture, but says that they shall dispose of it conformably to law.

No Failure of the Trust.

The next point made by the court below is, that the personal property is subject to escheat on account of the failure or illegality of the trust to which it was dedicated at its acquisition. There is nothing in the act of 1887 which intimates that this property shall be forfeited because there is a doctrine or practice among some members of the Mormon Church countenancing polygamy. Not at all. What does the court mean? Illegal, how? In what does the illegality consist? The trust was dedicated, according to the findings of the court to the spread of the tenets, and doctrines of the Church of Jesus Christ of the Latter-Day

Saints, as it is called, among which was the doctrine of polygamy. But that is not all. That is not the only doctrine. The doctrines and tenets of this Mormon Church embrace the whole doctrine of the Christian religion as revealed in the New Testament. This is their creed:

Articles of Faith of the Church of Jesus Christ of Latter-Day Saints.

1. We believe in God, the Eternal Father, and in His Son, Jesus Christ, and in the Holy Ghost.
2. We believe that men will be punished for their own sins, and not for Adam's transgression.
3. We believe that through the atonement of Christ, all mankind may be saved, by obedience to the laws and ordinances of the Gospel.
4. We believe that these ordinances are: First, Faith in the Lord Jesus Christ; second, Repentance; third, Baptism by immersion for the remission of sins; fourth, Laying on of hands for the Gift of the Holy Ghost.
5. We believe that a man must be called of God, by "prophecy, and by the laying on of hands," by those who are in authority, to preach the Gospel and administer in the ordinances thereof.
6. We believe in the same organization that existed in the primitive church, viz: apostles, prophets, pastors, teachers, evangelists, etc.
7. We believe in the gift of tongues, prophecy, revelation, visions, healing, interpretation of tongues, etc.
8. We believe the Bible to be the word of God, as far as it is translated correctly; we also believe the Book of Mormon to be the word of God.
9. We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God.
10. We believe in the literal gathering of Israel, and in the restoration of the Ten Tribes. That Zion will be built upon this continent. That Christ will reign personally upon the earth, and that the earth will be renewed and receive its paradisic glory.
11. We claim the privilege of worshipping Almighty God

according to the dictates of our conscience, and allow all men the same privilege, let them worship how, where, or what they may.

12. We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law.

13. We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to *all men;* indeed we may say that we follow the admonition of Paul. "We believe all things, we hope all things," we have endured many things, and hope to be able to endure all things. If there is anything virtuous, lovely, or of good report, or praiseworthy, we seek after these things.—JOSEPH SMITH.

The findings of the Court declare that the doctrine of polygamy, or plurality of wives, is one of the doctrines of the Church. I admit it. The Mormons hold that under certain circumstances and conditions it would not be wrong in the sight of God to have a plurality of wives, and they claim that this doctrine is nowhere repudiated or denounced by the teachings of Christ. But the revelation upon which they found their belief in that principle does not make it obligatory upon church members to practice polygamy, and it is a matter of history that only about one per cent. of the present Mormon population in Utah are men who have more than one wife. Should ninety-nine persons out of every hundred be despoiled of their property because of the practices of the other individual? It seems almost incredible that such a monstrous proposition should be contended for, even against the Mormons. But the findings of the Court also show that there are other and lawful purposes—charitable objects for which this property was acquired, and to which it has been dedicated, as found by the court. And there is no declaration in the act of 1887 that any court shall have the right to escheat this property to the United States because of any fault on the part of the members of the Mormon Church.

The COURT. Is it your idea that the property, if not

escheated to the Government, should be held for the benefit of a Church that recognized polygamy? Could there be a decree that would distinguish between taking care of the poor and taking care of a Church that recognized polygamy?

Mr. BROADHEAD. I think the case of Jackson *v.* Phillips (14 Allen) is authority for such a decree as your Honor suggests. In that case the Court, through Mr. Justice Gray, held that gifts for purposes prohibited by or opposed to existing laws cannot be upheld as charitable, even for objects which would otherwise be deemed such. But when the scope and purpose of the gift embraces objects, some of which are lawful and some unlawful, or are broad enough to allow of the fund being applied either in a lawful or an unlawful manner, the Court held that the gift would be supported and its application restrained within the bounds of law. But I do not wish to be misunderstood when I refer to the case of Jackson *v.* Phillips. That was the case in which an application was made for instructions in regard to the bequests in a will and as to how they should be enforced; and it may be claimed that in that case the Court impliedly refused to enforce an illegal provision in the will, and in such refusal the Court acted clearly within the admitted sphere of equity jurisdiction. But what jurisdiction has a court of equity as such to entertain a suit to forfeit or escheat property to the Government, more than to sentence a man to be hung without trial by jury?

When the act of Congress says that the court as a court of equity shall "wind up the affairs of the corporation conformably to law," but fails to say what the law is on the subject, we are driven to inquire what is the law governsuch a case? What power has a court of equity to enforce a forfeiture or decree an escheat. I have been taught that a court of law abhors forfeitures and that a court of equity will have nothing to do with them—that a court of

equity was commissioned to relieve from the oppressions and hardships of the law, not to condemn, confiscate, or escheat. And I ask your Honors what principle of law is there that authorizes any court to take from individuals any property that they may have because of immoral acts committed by those parties? Why, sirs, in England the doctrine of escheat and forfeiture and corruption of blood, attendant upon treason and felony, was abolished in the early period of the reign of the present Queen of Great Britain. The acts which for so long a time disgraced the jurisprudence of England, which forfeited the estates of persons whose blood was corrupted, because of treason or felony, have been repealed; there is not now upon the English statute-book a single law on the subject, which forfeits the estate of a person who has committed crime, except upon a conviction of outlawry—not one. I ask again, where, in the jurisprudence of the United States, either Federal or State, is there any law or any principle which would authorize the escheat to the Government—to any government—of property because of the moral delinquencies of the parties who happen to own it? I say there is no such law in this country. The Congress of the United States has given us no such law; can any court give it to us? Who is to establish the policy of the Government in regard to questions of this kind; the Congress or the courts?

Let us look now at the provisions of the act of 1862 and the three sections of the act of 1887 which authorizes the setting apart of such property as may be held by the members of this association, who, according to the findings of the court, maintain the same doctrines as were entertained by them as members of that corporation. These provisions of law authorize and direct the court to set apart to that very association, for the purposes of the worshipping of God and for a parsonage and burial-grounds, some of the very property involved in this litigation, in

order that these very doctrines may continue to be propagated. In pursuance of this authority the court below has set apart to the Church the Temple Block, upon which stands the Temple and the Tabernacle, in which daily and weekly thousands of people assemble to perform church services and listen to the teachings and preachings of the elders upon these doctrines and tenets of the Church.

What did Congress mean by the 26th section of the act of 1887, in which it provides for trustees to hold this property for the Church? Did it not then say, in effect, "We do not propose to take away the means of worship from these people because some of them practice and preach the doctrine of polygamy?" Is not the act of 1862, which declares that the property previously acquired shall not be disturbed, and that vested rights in real estate shall not be impaired, although the acquisitions thereafter must not exceed in value the sum of $50,000, a recognition of the valid existence of that Church organization, which is permitted, under that very law, to appoint trustees to hold this property for the very people who were maintaining and preaching the same doctrine that had been announced and preached from the beginning? The courts will not say that because there are five per cent. or twenty per cent. of the marriageable Mormon population, male and female, who countenance the doctrine of polygamy, that therefore the property of *all* shall be taken away. Why, sirs, if the churches in this country had to lose their property because one-fifth of their adult members were not very moral, many of them would be in a deplorable condition of poverty. But I say that if they were all subject to the charge of immorality there is no authority of law for depriving them of their property.

Vested Rights.

Before my time expires I wish to direct the attention of the Court to another question involved in this case, and

ask that you will examine my brief upon that point because I have not time to fully discuss it. It is in regard to the real property that was acquired by the Church before the passage of the act of July 1, 1862, and which was expressly reserved by the provisions of that act, because it becomes necessary for this Court to determine, under the provisions of this bill and the judgment of the court below, what property, if any, was acquired in violation of the provisions of that act; what property there was subject to have proceedings of forfeiture instituted against it; and in what portion of the property there were vested rights. Nearly the whole of this real estate in controversy was settled upon in 1848.

The COURT. What was it used for?

Mr. BROADHEAD. Salt Lake City was laid out and surveyed upon the public domain, in 1848, either just before or just after the treaty of Guadaloupe Hidalgo, under which treaty it became the property of the United States. The people who were there laid out the site for a city and divided it by streets and alleys into blocks and lots. These blocks and lots were settled upon by the inhabitants. This Temple block was inclosed by a substantial wall and a church built upon it. Since then three buildings have been erected upon that block, and it has been used exclusively for Church purposes from that day to the present. The Tithing office and grounds were used as a place for the reception and disbursement of tithings, which were given by the members of the Church from different parts of the Territory, such as farm products, cattle, sheep, and swine. There were improvements, in the way of buildings, corrals for the use of cattle, etc., put upon it long before 1862. It was used for the purposes stated, and has continued to be used in that way continuously up to the present time.

The Historian's office and grounds were taken possession of by one Rockwood in 1848, who sold his claim to the

Church in 1855. A building was then erected upon it which has ever since been used as the office and home of the Church Historian. No legal title was acquired to either of these pieces of property until after Salt Lake City was entered under the provisions of the town-site act of 1867, which authorized the land occupied by inhabitants of cities, towns, and villages that had been located upon the public domain to be entered by the mayor of the city, or, if there were no mayor, then by the judge of the county court of the county in which it was situated, who should be authorized to enter the property for the use of the inhabitants, and to him the patent issued from the United States. This entry was made in 1871 by the Mayor of Salt Lake City for the use of the inhabitants under the provisions of the law and the policy of the Government which had prevailed since the passage of the act of Congress of 1844, which was the date of the first town-site act. Many of the cities in the West were located under that act. The large city of Denver is one of them.

In the case of Hussey *v.* Smith (99 U. S., 22), it was held by this Court that under the town-site act of 1867, where a settlement had been made by Smith upon a lot in Salt Lake City, before the entry was made by the Mayor and the patent issued in 1871, he had an interest which might be mortgaged, an equitable interest in the property which he might sell and convey.

In Stringfellow *v.* Cain (99 U. S., 616) this Court held that where a settlement had been made on a lot in Salt Lake City in 1857, ten years before the passage of the town-site act of 1867, the interest acquired by settlement descended to the heirs of Cain, who made the settlement. In that case this Court says:

"All the interest their father had in the lot when he died was an inchoate right to the benefit of the town-site law in case the property should be purchased from the United States by the corporate authorities under the provisions of

that law. * * * He held the possession of one seeking to acquire a title by a possession adverse to all other inhabitants of the town. His right to maintain this adverse possession descended under the laws of Utah to his widow and children."

The same doctrine was held in the case of Colfield *v.* McClellan (16 Wallace, 332), in regard to a lot in the city of Denver, and nowhere is the doctrine of the law and the policy of the Government more emphatically announced than in the case of Lamb *v.* Davenport (18 Wallace, 313), in which Judge Miller, delivering the opinion of the Court, says:

"But it is equally well known that these possessory rights and improvements placed on the soil were, by the policy of the Government, generally protected so far at least as to give priority of right to the purchaser whenever the land was offered for sale and where no special reason existed to the contrary, and though these rights rested on no positive statute or any positive promise, the general recognition of them in the end by the Government and its disposition to protect meritorious settlers who were the pioneers of emigration in the new Territories gave a decided and well understood value to these claims."

But in this case now before the Court there was a positive statute on the subject—the town-site law, which was not in force in Oregon, where the property was located, in reference to which Mr. Justice Miller gave the opinion from which I have just read.

Even in the case of pre-emption rights it is held that an inchoate interest was acquired by the settler, although there was a law in existence at the time forbidding trespasses upon the public land, and although the land was by law subject to pre-emption. Now the court below has set aside the Temple block to this voluntary Church association, for the purposes of worship, under the provisions of this law. It has recognized the fact that the people composing

this Church have some right to hold property, whatever their doctrines may be; that they have a right to hold property for the purpose of worshipping God according to their own creed. The act of 1887 authorizes this to be done and the court below acted upon the theory that the corporation was dissolved. But they have not set apart any portion for a parsonage or burial-grounds. The law says that the court shall set apart a parsonage. There is a piece of property valued in the findings at $50,000, which was purchased by Brigham Young when he was president and chief officer of the Church, and a house was built upon it which was afterwards occupied by John Taylor, president of the Church from 1878 till the time of his death in 1887, as a residence—a parsonage—for the president of the Church. No setting apart has been made by the court of that property, nor of the Tithing office, nor Historian office, but on the contrary it has all been turned over to the district court for forfeiture. We say the findings show that all this is property which the court is bound to set apart for the use of the Church if it obeys the directions contained in the act of Congress of 1887.

But I have detained the Court too long already, and will close by recapitulating the

Appellants' Claims.

1. The acts of Congress of July 1, 1862, and of March 3, 1887, are unconstitutional and void in so far as they attempt to annul the charter of the appellant corporation, or to dissolve said corporation, or to limit its power to acquire and hold real property, because said charter was and is an executed contract which cannot be impaired, either by dissolving the corporation or by limiting its rights and powers in respect to the acquisition of property.

2. The power of Congress to disapprove and annul acts

of the Governor and Legislative Assembly of Utah Territory applies to such acts as are general in their character, and does not apply to an accepted charter of a private corporation which contains no reservation of the right to alter, amend or repeal the same, when there was no general law of the Territory reserving such right at the time the charter was granted.

3. The charter of the Church corporation, by the act of July 1, 1862, as well as by the lapse of time between its enactment and attempted disapproval—*thirty-six years*—received the sanction of Congress, and therefore could not be annulled and the corporation dissolved.

4. The act of Congress of March 3, 1887, was an act of judicial legislation by which it attempted to decree the dissolution of the corporation and determine what should be done with its property—virtually confiscating the same to the United States, without any default on the part of the corporation, or any judicial judgment of ouster or dissolution.

5. The intervenors claim that if the acts of Congress above mentioned could and did dissolve the appellant corporation, then the property seized by the receiver, and now in his possession, belongs to the members of the Church of Jesus Christ of Latter-Day Saints as an unincorporated religious sect, and should have been set apart for their use and benefit under the petition of intervention of Romney, Dinwoody, Watson and Clark, because there is no such thing known to the jurisprudence of the United States as escheat, and because there is no rule of law by which personal property of any kind can escheat to the United States.

6. All the personal property was legally acquired by the Church, and Congress never attempted to limit or restrict it as to the kind or amount of personal property it might acquire and hold. Such property is not subject to escheat to the United States on account of the failure or illegality

of the trusts to which it was dedicated at its acquisition, and for which it had been used by the corporation, because the act of Congress of March 3, 1887, recognizes the power and right of the Church to hold property, by directing that so much of its real estate as is used for the purposes of the worship of God, or parsonage connected therewith, or burial-ground, shall be transferred to and held by trustees for the Church. And because, if it be conceded that the promulgation of polygamy, to a small extent, as appears from the findings of the court below, is one of the uses to which it has been devoted, still there are numerous other uses, which are both legal and moral, to which it was dedicated and for which it should be used.

7. Prior to July 1st, 1862, the Church had such a vested right in the Temple Block, the Tithing Office property and the Historian's Office and grounds, as could not be impaired, even if the provisions of the act of Congress of that date are valid which limit the amount of real property to be thereafter acquired and held by the Church. Because its claim to this property dates back to the first settlement and location of Salt Lake City in 1848, and it is such a claim and right as this Court has held to be valid in law and equity.

8. The Church is entitled to have and hold the Gardo House and grounds as a parsonage, pursuant to sections 13 and 17 of the act of Congress of March 3, 1887 (irrespective of its value or the time of its acquisition), because it had been used and occupied by the president and head of the Church, as a parsonage, more than nine years prior to the passage of the act of March 3, 1887, and is still so used and occupied.

9. While the appellants insist that, whether the Church corporation is dissolved or not, either the members of the unincorporated sect, or the corporation, as the case may be, are entitled to all the property in the hands of the receiver, whether real or personal, and that no part thereof

is subject to forfeit or escheat to the United States, yet if it should be held that any part thereof is subject to forfeit or escheat, the forfeiture could only apply to so much of the Church farm and Summit County land as might be found to be in excess of the fifty thousand dollars in value at the time of their acquisition, which the Church had the legal right to acquire and hold after the passage of the act of July 1, 1862.

10. The appointment of the receiver was erroneous, because it did not appear to the Court, either from the bill of complaint or from the proofs, that there was any property subject to escheat to the United States, or that any of the property of the corporation was liable to injury or loss if it remained in the possession of those who then held it, during the pendency of the suit, and because the corporation did not hold the title to any of the Church property, it being at the time of the pretended dissolution of the corporation in the possession of certain trustees, who had been duly appointed to hold the titles for the Church, and who were as capable of managing and controlling the property for the members of the unincorporated sect as for the corporation itself.

Exercise of Arbitrary Power.

It will be observed that, so far as the personal property is concerned, there is nothing in the act of 1887 which assigns any reason or cause for declaring the corporation dissolved, or for directing the Supreme Court of the Territory of Utah to wind up its affairs and set aside a portion of the real estate for the purposes named in the 26th section of the act. Congress assumes that the act of 1862 has been violated, and authorizes the Attorney-General to institute proceedings to forfeit and escheat to the United States property acquired in violation of the act of 1862, the proceeds to be disposed of by the Secretary of

the Interior for the use of the common schools of the Territory. These schools are open to the children of people of all classes and denominations. Therefore this property, donated by members of a religious body for certain specific purposes, is to be seized and diverted to other and different uses, and for the benefit of persons who never contributed anything to it.

By the provisions of the 17th section of the act the court is required to make such a decree as shall be proper to effectuate the transfer of the title to real property "now held and used by the corporation for places of worship and parsonages connected therewith and burial-grounds," to trustees for the purposes mentioned in the law.

The first clause of this section declares the corporation to be dissolved, and requires the Attorney-General to institute such proceedings before the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of the section and to wind up the affairs of the corporation conformably to law. To execute the foregoing provisions of the section is to decree that the corporation is dissolved; this the act of Congress requires the court to do, and then to wind up its affairs conformably to law.

In pursuance of the broad provisions of this section 17, the Supreme Court of the Territory, at the instance of the Attorney-General, seized upon all the property of the corporation, real and personal, and decreed a dissolution of the corporation, thus *executing* in the language of the act the provisions of this section. A receiver was appointed to take and hold the property, in the absence of any cause for such appointment, such as usually gives authority to courts to appoint receivers.

The alleged dissolution of the corporation and the assumption on the part of the court, before any trial was had or investigation made, before even an answer was filed to the allegations of the bill, authorized in the opinion of

the court, the Government of the United States to seize and confiscate all property which might be found, such as cattle and sheep, stocks and lands, houses, temples and tabernacles, and authorized the court, through its officers, to take possession of all such property, although it is alleged in the bill that certain persons named therein, at the time of the institution of the suit, held such property in their possession as trustees for the corporation. The court in its decree specially finds that all the real property described in the findings of the court was, at the time of the institution of the suit, held in trust for the corporation.

These proceedings are extraordinary, to say the least of them. The act of Congress assumes that it not only has the power to disapprove the act by which the corporation was chartered, but to declare that the property may be seized by the Government officers without any evidence that the corporation has in any respect violated the provisions of its charter, that it may be held in the hands of a receiver and finally distributed in such manner as the court might think proper.

Can such proceedings be justified except upon the ground that the Government of the United States, its legislators, its courts and their officers, are not bound to regard that provision of the fundamental law of all free governments, that no person shall be deprived of life, liberty, or property, without due process of law? We think not. Here is a judgment without a hearing, a seizure without a cause, and an escheat without the pretence of any authority of law.

I say that these are acts of arbitrary power. It has been said by a distinguished jurist in this country that there are two kinds of law in America. One is the law which changes, comprising the acts of legislators and the customs of communities, which change from time to time as public exigencies may require. The other is the law that does not change. The law of the land which recog-

nizes the doctrine that no person shall be deprived of life, liberty or property, without due process of law. That law is unchangeable and eternal. It qualifies the authority of legislators; it limits the jurisdiction of courts; it stands as a sentinel to guard against the approach of arbitrary power over individual liberty everywhere throughout this land. Whencesoever it came, whether from the barons at Runnymede, or from the forests of Germany, or from the teachings of Greek philosophers of an earlier age, it has found its way here, and in this country it has become the foundation-stone of our political fabric. If I were asked to declare my opinion as to what was the origin of that doctrine, I should say it rather springs from that spirit of manhood, implanted in the breast of every man who has stamped upon his brow the image of his Maker, which enables him to say, in the face of arbitrary power, "I am not your slave; my rights are governed by law; and I am authorized by the God that made me to say, that I am not subject to your mere will or caprice." What is the answer of arbitrary power? The answer, and the only answer that can be given is, "I am stronger than thou." That is the answer of the brute and the barbarian, if, indeed, the brute could speak. It does not belong to the teachings or practice of Christian civilization, and it will not be sanctioned by this exalted tribunal.

Supreme Court of the United States.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,
APPELLANT,
vs.
THE UNITED STATES.

ARGUMENT OF HON. JOSEPH E. McDONALD,

For the Appellant.

Delivered January 18, 1889.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

Supreme Court of the United States.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,

APPELLANT,

v.

THE UNITED STATES.

Argument of Joseph E. McDonald for the Appellant.

May it please the Court: The title of this case, as it stands on the docket of this Court, is, The late Corporation of the Church of Jesus Christ of Latter-Day Saints *v.* The United States.

The Court is dealing with the corporation, and not with the Church; the suit is against the late corporation, and not against the Church. Neither Congress nor the courts have any power or jurisdiction over the "doctrines and tenets" of the Church of Jesus Christ of Latter-Day Saints. These are protected and guarded by the first amendment to the Constitution of the United States, in which it is declared that—

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The free exercise of religion embraces the right to own and control property and funds for the endowment of churches, the administration of public charities, the support of ministers, and the sepulture of the dead. It is not the mere right to address one's self to his Maker, in any form or any manner that he may please, but it embraces these other collateral rights as well. That was held to be the law by this Court in the case of Terrett *v.* Taylor (9 Cranch), to which the attention of your Honors has been already called. This property, necessary for the free exercise of religion, may be held by the Church as a voluntary association, or by a corporation created for that purpose with appropriate powers. It is not essential that there should be a corporation. In many of the States the Catholic Church, to this day, has no corporation, has no civil organization; its property and property rights are held and controlled by its bishops, in whom the title is vested, and who transmit it to their successors by will. Your Honors may remember that not a great while since, in the State of Ohio, the bishop of that diocese entered into private speculations that involved the property of the diocese, because it stood in his name, he being the legal owner, and yet that property was held by him for the use and benefit of the church or churches within his diocese.

The COURT. Is it not the law there that the bishop is a corporation sole to represent the Church?

Mr. MCDONALD. No, sir.

The COURT. In some States that is so?

Mr. MCDONALD. In some States that is true. In Indiana it is not. There is a general law in my State under which religious bodies may incorporate.

In the case at bar the Church of Jesus Christ of Latter-Day Saints existed as a voluntary association before the ordinance or act of incorporation was passed and adopted.

If by any act or acts of the Congress of the United States it has become disincorporated, it has been remitted to its rights as a voluntary association. I do not think there can be any doubt about that proposition. This Church existed, and existed in the Territory of Utah, before the passage of the ordinance and long before its re-enactment by the Territorial Legislature, which, according to the views of the Government, was the beginning of the life of the corporation. Most of its real estate had been taken possession of long before this incorporating act undertook to create a civil person out of the Church.

The COURT. In what year was this land occupied?

Mr. MCDONALD. The Mormons entered Salt Lake valley in 1847, before the treaty with Mexico. The City of Salt Lake was laid off in the spring of 1848, just shortly before the treaty of Hidalgo, and most of the real property, of which your Honors have heard so much, was in possession of the Church from the time the city was laid off, and before it came under the jurisdiction of the United States.

The COURT. You say this property. Do you mean the property covered by this decree?

Mr. MCDONALD. Yes, sir; most of the real estate. I shall distinguish that which was purchased since, before I get through.

The COURT. There was no title acquired, however?

Mr. MCDONALD. No, sir; none, except the title of occupancy which they had, as against the Mexican government, because they settled upon Mexican territory; but it was an occupancy that was afterwards recognized by the United States, by the passage of what is known as the Town Site Act of 1867, one year before the laws of the United States relating to the public lands was extended over that Territory, for that was not done until 1868.

The COURT. The town site act was before 1868?

Mr. McDONALD. Yes, sir; and a year before the land laws of the United States were extended over that Territory, or the surveyor's office had been established and the right of pre-emption or occupancy, for the purposes of pre-emption or settlement, had been extended over it.

It is not claimed that the Church has been dissolved. On the contrary, it is expressly found by the court below that it continues to exist, and by the third paragraph of the decree certain real estate is set apart and "turned over to its members for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body." That is the Temple block, valued according to this record at $500,000, a ten-acre square in the city of Salt Lake.

Has the Church corporation been dissolved? Was the power to repeal the ordinance of incorporation reserved to the United States by any law that entered into or formed a part of the charter contract? I take it that that is the proper inquiry. For if it is a contract between the United States and the corporation, or the Church forming the corporation, and if it has been repealed, it must have been repealed by virtue of some reserved right which entered into and formed a part of that contract.

Now, I shall not take up time in discussing the questions relating to the powers of Congress over the Territories, or whether the United States is bound by a provision of the Federal Constitution that expressly applies to States or not. I am ready to stand upon the single proposition stated by the late Chief Justice of this Court in what are called the Sinking Fund cases; that while that provision of the Constitution clearly does not embrace or in any manner affect the Federal Government, yet that the "United States, equally with the States, are prohibited from depriving persons or corporations of property without due

process of law; and also that the United States are as much bound by their contracts as individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that that term implies, as it would be if the repudiator had been a State, or a municipality, or a citizen." I do not think it is necessary to go any farther than that upon this question. Therefore, I again restate my inquiry ~~and say~~, what power is there reserved to the United States to repeal the ordinance of incorporation—for the United States was the contracting party here—by any law that entered into or formed a part of the charter contract? And I state further that it has never been judicially held in this country that the general powers vested in all legislative bodies to alter, repeal, or amend laws of a general nature gives the power to alter or amend a charter of incorporation after its acceptance. This Court has expressly ruled that a State has not that power, and I say that the United States has no more power when dealing with its own contracts. An act of incorporation, when accepted, is a contract, and when it has taken full force and effect it has created property of the highest character. The right to be a corporation is a franchise; and having created this property, this incorporeal hereditament, the creator has no power to destroy it, unless the right has been reserved so as to enter into and form a part of the contract under which it was created.

If the Church corporation has been dissolved, by what act of Congress has that dissolution been effected? Is it the act of July 1, 1862? I confess, your Honors, that I do not understand that act. The language of the act is broad enough to operate as a repeal of the ordinance of incorporation; but the theory of this bill and the findings of the court are against such a construction. Your Honors

have heard the second section of that act read. In the limited time that I have to address the Court, I shall not read it again, because you will undoubtedly give it your attention hereafter. But I repeat again that there is ambiguity about the act which ought not to appear in an act of Congress upon so grave a subject. An act, to have the force and effect to repeal a charter, after acceptance and after rights have been acquired under it, ought not to be susceptible of two constructions. In the forepart of the section the ordinance of incorporation is referred to by name, the time when it was validated by the Territorial Legislature is given, and it is in direct terms repealed; then other provisions are placed in the act, and it finally winds up with a proviso that it is the purpose of the act only to repeal so much of these laws as countenance, uphold, or support polygamy.

The world is either round or flat, and it won't do to put it both ways in an act of Congress. If Congress had the power to pass the act, and if it repealed the ordinance of incorporation, then the Church became disincorporated on the taking effect of that act, and all rights of property reserved to the Church by the act, and all property, real and personal, subsequently acquired, would belong to the Church association as a voluntary ecclesiastical body.

In our brief, in this case, we have insisted that the act of 1862 did not disincorporate the Church for want of power in Congress to pass it. My co-counsel, Colonel Broadhead, has argued also that upon the proper construction of the whole act it was not the intent of Congress to repeal it. I shall not try to add to the strength of his argument, but insist that if Congress had the power to pass the act and it repealed the ordinance of incorporation, then the Church became disincorporated on the taking effect of that act, and all the rights of property revested in the Church in the

manner I have already stated, and all subsequently acquired property (real and personal) would belong to the Church as a voluntary ecclesiastical body. But the Government undertakes to gather up this property on the assumption that the corporation did not terminate at that time, but that it continued some kind of an existence, as claimed by the Solicitor-General in his brief, as well as in his oral argument, that it was still a *de facto* corporation, notwithstanding the annulment of its charter by the act of 1862.

Now, I shall take but little time in discussing that proposition, but shall lay down what I believe to be sound law upon the subject, that the doctrine of a corporation *de facto*, insisted upon by the Solicitor-General, would not apply after the repeal of the ordinance, for after that there could be no corporation *de jure*; and where there cannot be a corporation *de jure*, or the semblance of one by law, there is no foundation on which a corporation *de facto* could rest. There must be color of law, or there can be no *de facto* corporation, any more than a man can exist and cannot exist. A corporation is but an artificial person, and it must have at least color of law to give it *de facto* existence. It must have law to make it a corporation *de jure*. As color of title will support adverse possession, so color of law would authorize the recognition of a corporation *de facto*. A corporation *de facto* stands upon the doctrine of estoppel; it has nothing else to rest on. Neither the so-called corporation nor the adverse party is in a position to enter the plea of *nul tiel* corporation. That is all. It could not, therefore, apply in a case like this where the Government is dealing with its own creature.

Now, your Honors, this law is bad enough, the invading of private rights secured by the Constitution; but its exe-

cution by the decree entered in this case is without justification or excuse.

If the act of July 1st, 1862, did not repeal the ordinance of incorporation, then it affirmed it, without any reserved right to repeal it at any subsequent time; and the act of March 3, 1887, in so far as it seeks to annul and disaffirm the ordinance, is void. Upon that point I wish to call the attention of your Honors and that of the Solicitor-General to two authorities, which we were not able to find in time to put into our brief, having found them only on yesterday. Under the statement "an act of a Legislature recognizing the existence of a corporation waives all previous acts of forfeiture."

The COURT. On what page of your brief would these two authorities naturally come?

Mr. MCDONALD. They would naturally come on the last page of our brief. We will put them in.

State *v.* M. O. & R. R. R.R. Co., 20 Ark., 497.

The People *v.* President and Directors, 9 Wendell, 951.

Therefore, we insist that the act of March 3, 1887, in so far as it seeks to annul and disaffirm the ordinance, is void. But that act is also void, we insist, because it is in the nature of a legislative decree; and in this respect it not only invades the province of the judiciary, but it attempts to deprive the Church of Jesus Christ of Latter-Day Saints of its property without the right of trial by jury. I used the expression, the right of trial by jury, for the reason that we insist that no man's property can be taken from him excepting according to the course of the common law, and the right of trial by jury in such cases is expressly guaranteed by the amendments to the Constitution. But that it invades the province of the judiciary and is in the nature of a leg-

islative decree, it seems to me, there can be no doubt. As to the effect of such legislation, I may be permitted to read a paragraph from the dissenting opinion by Mr. Justice Bradley in the Sinking Fund cases, where he discusses the limitations of the power of Congress under the Federal Constitution and under a republican form of government:

"I think that Congress had no power to pass the act of May 7, 1878, either as it regards the Union or the Central Pacific Railroad Company. The power of Congress, even over those subjects upon which it has the right to legislate, is not despotic, but is subject to certain constitutional limitations. One of these limitations is that no person shall be deprived of life, liberty, or property without due process of law; another is, that private property shall not be taken for public use without just compensation; and a third is, that the judicial power of the United States is vested in the Supreme and inferior Courts, and not in Congress. It seems to me that the law in question is violative of all these restrictions, of their spirit at least, if not of their letter, and a law which violates the spirit of the Constitution is as much unconstitutional as one that violates its letter. Congress takes up the question *ex parte*, discusses and decides it, passes judgment, and proposes to issue execution and to subject the companies to heavy penalties if they do not comply."

Now that was said with reference to a corporation created by Congress, the Union Pacific Railroad Company, with a reservation in its act of incorporation authorizing Congress to alter, amend, or repeal the act. In this instance, Congress undertook to make certain alterations in it. The court held that if these alterations affected the character of the contract entered into they would be void, because alterations must be in the line of the contract and not outside of it. Congress had not undertaken to exercise in that case the power to repeal the charter, but to

amend it, and the amendments, it was claimed by the whole court, and properly so, must be in accordance with the contract itself and not outside of it. A majority of the court held that these amendments were such, but a strong minority held otherwise. They did not differ, however, in principle upon this question, but simply in the application of the principle.

If we are in error as to the effect of the acts of Congress referred to, and it shall be held that the Church corporation was dissolved by force of the act of March 3, 1887, or by the joint effect of the act of July 1, 1862, and the act aforesaid, then we insist that the real estate held by the corporation in trust for the Church revested in the Church by virtue of the act of July 1, 1862, supplemented by the act of March 3, 1887. That is what we claim became of this property under any possible circumstances.

Let us stop here, for a moment, and examine the law with reference to the real estate. Sections 2 and 3 of the act of 1862, as I have already stated, expressly limit and construe the act so as not to affect or interfere with the right of property legally acquired under the ordinance of incorporation, nor with the right to worship God according to the dictates of conscience. And in the limitation upon future acquisitions referred to in section 3 the proviso states that existing vested rights in real estate shall not be impaired by the provisions of this act.

Your Honors, this was an act directed against the Church corporation. It was certainly known to the framers of that act, in 1862, that, so far as real estate was concerned in the city of Salt Lake, in the Territory of Utah, there had then been no private titles acquired; that the title to lands was still in the United States, at least all that had not private owners at the time the property was acquired by the treaty with Mexico. It was not until 1867

that any recognition of the right to acquire property in that Territory was made by the passage of the Town Site Act, and not until 1868 that there was any right to purchase from the United States any of these lands or to make homestead or pre-emption entries. Therefore, the provisions of this act of 1862, which undertook to save to the Church, or to its corporation, if it continued to exist, the rights of property that had been before that time acquired, certainly did not have any reference to mere legal titles, but to the property then owned, held, *vested* in it, occupied and claimed by it, by whatever right and title there was to it, or whatever might grow out of it—this is what was secured by the act, or else it was a mockery; if it applied only to lands that had been acquired and were held by a legal title, there was nothing whatever for it to apply to. The Solicitor-General devoted some considerable time in endeavoring to establish the proposition that neither the corporation nor the Church could acquire any vested right in any of this property until it had been conveyed to the Mayor of the city of Salt Lake and by him parcelled out to those for whom he was made trustee under the law.

Now this act certainly contemplates a different result from that, and I therefore insist that the property which the Church took possession of in 1848, and that passed under the control of this corporation when it became an incorporated body, either in 1851 or 1855, at whichever period you may undertake to fix it, and ripened into a legal title in 1871, was fully and completely secured by the act of 1862. But I also say, supplemented by the act of 1887, for that act says that while the Attorney-General is directed to bring suit against corporations to recover property obtained or held in violation of the 3d section of the act of Congress approved the 1st day of July, 1862, "no building, or the grounds appurtenant thereto, which is held and oc-

cupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial-ground, shall be forfeited." Now this qualifies the act of 1862, as that act simply went to the extent of securing vested rights in real estate; so that the limitation of $50,000 should not apply to what had already been acquired. The act is clearly prospective, and not retroactive. But the act of 1887 supplements it upon that subject, and says that in addition to this, if there has been any property acquired which is now held as places of worship, or for a parsonage, or for a burial-ground, that too shall be exempt without regard to its value. And then the 26th section provides, that all religious sects, societies, and congregations shall have the right "to have and to hold through trustees appointed by any court exercising probate powers in the Territories, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial-grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation." Here is a still further limitation. It does not say that it shall only be that which was occupied, but they are authorized to have and to hold such property for the erection or use of houses of worship, and for such parsonages and burial-grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation. It does not limit the right to property already in use for these purposes. So that, in the last section of this act of 1887, Congress expressly recognizes the fact that the right to worship embraces the right to have places of worship and to have the means of ministration as well. It covers substantialy the same grounds that are covered by Mr. Justice Story, in Terrett *v.* Taylor, in speaking of what this liberty of conscience means in this country.

Now, your Honors, at the time this act of 1887 took effect, there was holden for the use and benefit of this Church corporation, if it was still a corporation, or, if not, for the Church, the Temple block, the Tithing office and grounds, the Historian's office and grounds, and the Gardo house and grounds, and the tract of land known as the Church farm. The corporation never held the title to any of this property. The Temple block was held by John Taylor, trustee, in trust for the corporation. That is the only piece of property that was held by the trustee named or provided for in the ordinance of incorporation, and it was set apart, under this decree, for the use of the Church.

The COURT. Let me ask you there: The act of 1887 provides for forfeits to the United States of property of corporations obtained or held in violation of the act of 1862, or in violation of section 1790 of the Revised Statutes?

Mr. MCDONALD. The two sections are the same.

The COURT. I supposed they were the same. Does the decree in this case show or distinguish the property which was so obtained or held, assuming the act to be subject to the construction placed upon it by you?

Mr. MCDONALD. The decree distinguishes just in this way, your Honor: it holds that the legal title to none of this property was acquired until after the taking effect of the act of 1862. It finds the facts of occupancy, possession, and claim from 1848, and then it holds, as a question of law upon those facts, that the legal title to the property not having been acquired until after the passage of the act of 1862, there were no vested rights in it, and therefore it was subject to forfeiture or escheat under that act.

The COURT. Does the decree show that at the time of the passage of the act of 1862 the Church held up to the limit of $50,000?

Mr. McDONALD. It shows, according to the facts set out, that they held at that time, in equitable claim and title, this Temple block and other property in excess of $50,000. There is no doubt of that. The real property which the Church claimed at that time to belong to it, as represented in the corporation, or by trustees holding it for the use and benefit of the corporation, was in excess of $50,000. But the finding of the Court sets out a state of facts such as I have already undertaken to state to your Honors, and then upon those facts it determines as a question of law that the legal title to none of this property had become vested in the corporation before the act of 1862, and therefore none of it was secured by the terms of that act; it was not "vested right of property" within the reservation of that act.

The COURT. No property was set apart to the congregation except that covered by the Temple block?

Mr. McDONALD. None whatever.

The COURT. Is there anything to show when they took possession of the Temple block?

Mr. McDONALD. Yes, sir; it shows that they took possession of the Temple block in 1848.

The COURT. Is there anything to show what the value was then?

Mr. McDONALD. Not what the value was then.

The COURT. Or at any time subsequent to that up to 1862?

Mr. McDONALD. No, sir; there is no attempt to appraise it, as I understand it, except at the time of this investigation. All of these tracts, that is, the Temple block, the Tithing office and grounds, the Historian's house and grounds, and the Gardo house, were, at the passage of the act of 1887, held and used for church purposes, and all, except the Gardo house and grounds, were in the

possession of the Church before the passage of the act of 1862, and except the Historian's house and grounds, as far back as 1848; the Historian's house and grounds came into their possession in 1855. The tract of land known as the Church farm were held in the names of trustees. That is the condition of the real property. It has been claimed by the Solicitor-General that the questions at this time before the Court has nothing especially to do with that real property. It seems to me that that is not a correct view to take. For, if your Honors determine that this corporation has become dissolved, then, under the bill that has been brought here in connection with intervening claims and intervening petitions, it will become the duty of your Honors to determine what property has been reserved and secured by the reservations in the act of 1862 and the act of 1887. The Solicitor-General says that the decree may divest and turn over to the United States $450,000 worth of personal property as having escheated to the United States, take it out of the possession of those in whose possession it was found, without trial by jury, without any common law procedure at all, but by the force and effect of the decree of dissolution found in the act of Congress under the terms of which this bill has been filed; but that you have no power to determine anything at present in reference to the right to the real property, which these acts undoubtedly undertake to preserve to somebody and to some purpose. If the bill itself does not embrace them, certainly these intervening claims have brought before this Court for consideration the true construction of these acts with reference to the right of property after the corporation shall have been held to be dissolved, both as to real and personal property, and we say—that is our contention upon this question—that, in respect to those rights, the dissolution of the corporation simply relegates this property

back to the Church for whose use and benefit it was held, except so far as it may have been in excess of the amount permitted by the act of 1862, if that could apply to the future acquired property of a corporation already in being.

The COURT. May I ask you to enlighten me a little about what has been done as to the difference in the jurisdiction of the courts in regard to this real estate as distinguished from the decree which the court makes with regard to the personalty. It has been stated, in general terms, that the court which decided this case made some reference to some other court as to the question of jurisdiction. Are they not the same court?

Mr. MCDONALD. No, sir.

The COURT. What court decided this case?

Mr. MCDONALD. The supreme court of the Territory of Utah, specially sitting for that purpose, under the act of 1887.

The COURT. The act of 1887 confers that jurisdiction on the court *in banc*, or the supreme court?

Mr. MCDONALD. Yes, sir. Your Honor will see that the 17th section of the act, after annulling the acts of the Territorial Legislature referred to, then provides that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to carry into effect the foregoing provisions of the act. That is the section declaring the dissolution of the corporarion. Then farther down it confers upon that court, for that purpose, equity powers. The court under its ordinary jurisdiction is an appellate court, not one of original jurisdiction.

The COURT. Is there any provision in the statute for referring any part of this litigation to some other court?

Mr. MCDONALD. Yes, sir; the 13th section makes that provision, and in pursuance of it the last clause of the decree in this law case entered.

It reads as follows:

"It is furthermore ordered and adjudged that there is not now, and has not been since the 3d day of March, 1887, any person legally authorized to take charge of, manage, preserve, and control the personal and real property hereinbefore set out, except the receiver heretofore appointed by this court; and it is therefore ordered that the receivership hereinbefore established by this court is continued in full force and effect, and that the said receiver shall continue to exercise all and entire the powers and authority conferred upon him by the decree appointing him; and it is further ordered that he do continue in his possession and keeping all of the property, real and personal, hereinbefore set out, except such realty as has been set apart by the provision of this decree for the benefit of the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints, and that he do safely keep, manage, and control the same in accordance with the provisions of the order of this court appointing him receiver, pending the determination of the proceeding upon information hereinbefore referred to and until the further order of this court; and final action upon and determination concerning the accounts, proceedings, and transactions of said receiver and all matters connected with or incidental thereto are ordered to be reserved for the future consideration and decision of this court."

The COURT. He refers to some information there.

Mr. MCDONALD. He finds, as a fact among the findings of fact, that informations have been filed under the 13th section of the act in the district court.

The COURT. That is the one that was referred to?

Mr. MCDONALD. Yes, sir; the district court.

The COURT. I was under the impression that such information or proceeding was to be filed under the direction of that order in the decree that it said it should be done. Will you turn to the finding and tell me what it it does say?

Mr. McDONALD. It will be found among the findings of the court at page 98 of the record, and is as follows :

"That several proceedings have been instituted by and with the consent and advice of this court, by information, on behalf of the United States of America, in the third district court of said Territory of Utah, for the purpose of having declared and adjudged forfeited and escheated to the Government of the United States all of the above-described real estate, excepting the said block."

The COURT. I guess that is all that is necessary. They say it is done with their advice ?

Mr. McDONALD. Yes, certainly.

We come now to consider the question of personal property. As to it neither the act of 1862 nor the act of 1887 pretend to escheat it to the United States, nor in any manner declares it forfeited. There is no ground, therefore, on which the right to declare it escheated to the United States can possibly rest, and to take it with a strong hand, as the decree in this case proposes, is simple robbery.

The Church is still *in esse*, and I desire your Honors to bear in mind that fact all the way through this case. The Church existed before the corporation ; it has continued to exist since. The corporation was created for the purpose of managing the affairs of the Church, and especially with reference to its property. Because of certain powers contained in the ordinance, it has been claimed by the Solicitor-General that it was a public corporation. Then, again, he has claimed that it was uniting Church and State, because it was authorized to make by-laws to regulate and control and govern the members of the corporation who are members of the Church ; and, among other things, to collect tithing. Upon the word tithings the Solicitor-General has founded a most singular argument : that it gave

it the power to enforce, as a civil right by judgment and execution, by coercion of law, the payment of these tithing dues, or whatever they might be called, into the treasury of the Church or the corporation. I have looked through this ordinance in vain to find any such power or any well-governed objection to it on that account, and, after all, the third section of the ordinance concludes that all the powers are to be exercised in conformity with the Constitution of the United States. It is not proposed to go outside of that authority, to disregard the limitations of power, but, like any other ecclesiastical corporation, it simply undertakes to make such rules, regulations, and by-laws as may be necessary for the government of its members.

I have stated to your Honors that the Church is still *in esse*. The court below so found, and also found that it was capable of taking and holding real estate as an unincorporated body to be used for the convenience of its members in the lawful exercise of worship, according to the tenets of said sect. This fact relieves the United States from the burthen of taking and holding the personal property under the only doctrine by which it could possibly claim it, and that is the doctrine of *parens patria*, as it is just as necessary that the Church should enjoy its personal property in connection with the exercise of its religious rights as that it should possess real estate.

Now, your Honors, a great deal has been said about the common law in reference to the property of a defunct private corporation. That is the only kind of corporation in which this question can have any force or bearing, and if your Honors feel curious to go back and examine the black letter on that subject, I think you will find it very difficult to tell what the common law was. There is, however, a principle that where either an artificial or a natural

person dies, and there are no known heirs or parties entitled to take the property under the laws, it comes into possession of the sovereign under the doctrine of *parens patriæ*, "the father of the country," to be holden for those who may be entitled to it, when they should present themselves and make proper proof of their right. This is the only doctrine under which, in these modern times, the property of a defunct corporation can come into the control of the sovereign. If there ever was such a doctrine as has been asserted, in regard to the common law of escheat of the personal property of a defunct corporation, because it could have no heirs, and could have no successor, it never did apply to religious corporations, for the reason that the *cestui que trust* never dies; the Church remains; the corporation may have terminated its existence by lapse of time, or it may have forfeited its franchises, and the franchise may have been taken away by due process of law, because the franchise is subject to seizure under a decree of forfeiture, and that is all that the sovereign has a right to seize under such a decree; its execution can go no further.

The COURT. Will you permit me to make a suggestion right there? Can any church—the First Presbyterian Church of Washington city suggests it to me—can any church by that designation, however it may have been popularly known, take or hold property under that name? If it was incorporated it could, because it was a corporation. I suppose that the practice of incorporating churches is rather a modern one, within the last fifty or sixty years, but their property rights, as I understand it, are held always by trustees. In other words, there must be an artificial person like a corporation to take and hold property, or there must be persons like trustees who are actual living persons who could take and hold the property. But your

argument seems to be that the impalpable thing called the church could take it. I do not understand that to have been the law.

Mr. McDONALD. When real estate is to be held where there is no corporation it may require trustees, but I insist, your Honor, that personal property belonging to a church may be managed by ordinary agents.

The COURT. The corporation was merely the trustee?

Mr. McDONALD. Yes, sir; the corporation was merely a trustee of the personal as well as the real estate.

The COURT. I suppose when you say that the *cestui que trusts* being the Church never die, you mean that under the law of charities and religious uses of England, where property is given for the benefit of charity to a church, the Court of Chancery will not suffer the charity to be useless for want of a trustee, but will always appoint a trustee that charity may live, notwithstanding there may temporarily be no trustee, inasmuch as the *cestui que trusts* always exist. That is your idea in regard to it?

Mr. McDONALD. Yes, in part.

The COURT. Then the question is whether this doctrine of perpetual charities may be invoked in the present case. I do not know that there is any great question about that, but there may be some in consequence of the state of the law in that Territory.

Mr. McDONALD. This very act, your Honor, authorizes the appointment of trustees to take and hold real estate, to which the Church may still be entitled under these laws, and that the trustees must be of the nomination of the Church, receiving, however, their formal appointment from the court of probate.

The COURT. Recognizing the doctrine of charities?

Mr. McDONALD. Yes, sir. The 26th section, which I have read, directly recognizes that. But although, as his

Honor Judge Miller said, religious corporations may not have existed generally in this country for a great many years, as is stated in Terret *v.* Taylor, the property of a religious body may be held either through the medium of a corporation or without it. If the church exists, which is the beneficiary of the property, and it is necessary to have instrumentalities in the form of trustees to hold property, is the Government going to seize it because at the very time of the dissolution of the corporation there may not be trustees for that purpose? But in this instance there are trustees who had been duly appointed. They applied to the court for the property, under the provisions of this act, and claimed that if the corporation was dissolved they had a right to take the property for the Church; that being denied, certain members of the Church, intervenors in this suit, on behalf of themselves and of all other members, applied for the property; so there has been no lapse or default in this case, no failure on the part of the Church to assert its rights. Suppose this act of incorporation had been given for a definite time, in place of being perpetual, and suppose the time had expired and the corporation had become dissolved by the lapse of time, would it be claimed that the Government could step in and seize that property from the Church? If so, on what ground? Where would the right to do so come in? Are the rights of the Church any less because Congress has asserted a power which it is claimed it had reserved from the beginning to terminate this perpetual corporation by repealing or annulling the law under which it was organized? How is it that this Church, owning property at one period that passed under the control of a corporation, created for the purpose of holding it for the benefit of the Church, has lost that property when the existence of the corporation has been terminated?

There are many other questions in this case that I would like very much to consider, but my time has long since expired, and I must not trespass longer on the indulgence of the Court. I will simply refer your Honors again to the case of Jackson *v.* Phillips (14 Allen, pp. 555, 557, 568, and 569), cited in the printed brief of Messrs. Broadhead & Richards (page 100), which we think clearly meets one of the questions involved in this case, and which I had intended to discuss.

I now take leave of this case. Our fathers, when they organized the United States of America into a government, under the Federal Constitution, undertook in that instrument to guard and protect civil and religious liberty from the encroachments of arbitrary power.

Under the system of government established by them the responsibility of maintaining these safeguards rests with this Court, a co-ordinate branch of the Government. No more important case in principle has ever been submitted to it than the one now on hearing. The Federal Government has reached the end of its first century, and for the first time it has come into the courts upon a claim arising under an act of Congress seeking to confiscate the property of the members of a church on account of doctrines and tenets of the church.

This can only be done by the sanction of this Court, which, I am sure, will never be given. For whatever disposition your Honors may make of the cause, I feel certain you will not soil the hands of the Government with the spoils of a church, however great the heresy of which complaint is made. The only remedy which our form of government sanctions is "to leave error free while truth is free to combat it. Proscription and confiscation never yet stamped out a heresy, reformed a religious creed, or improved the morals of the victims."

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In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE LATE CORPORATION OF THE Church of Jesus Christ of Latter-Day Saints and others, appellants. *vs.* THE UNITED STATES. } No. 1423.

BRIEF FOR THE UNITED STATES.

Power to remit
18 Stat 253 258

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THE LATE CORPORATION OF THE Church of Jesus Christ of Latter-Day Saints and others, appellants. *vs.* THE UNITED STATES. } No. 1423.

BRIEF FOR THE UNITED STATES.

I.

It is alleged by the appellants that such provisions of the acts of Congress of July 1, 1862, and March 3, 1887, as provide for the dissolution of the corporation of the Church of Jesus Christ of Latter-Day Saints are void, because they impair the obligations of a contract.

THE ALLEGED CONTRACT.

The alleged contract is an act of incorporation, set forth at length in the appendix, Exhibit A.

The first step towards the organization of the corporation was an ordinance of the so-called "State of Deseret," approved February 8, 1851 (Laws of Utah, 1876, p. 232).

The "State of Deseret" never had any legal existence; but certain inhabitants of an area of land of about 700 miles square, within the domain of the United States, embracing in its limits the present Territory of Utah, acted as a voluntary association. The ordinance, therefore, had of itself no legal validity at the time of its passage. On the 9th of September, 1850, the organic act of the Territory of Utah was passed (9 U. S. Stats., 453), and on the 4th of October, 1851, by a joint resolution of the legislative assembly of the Territory of Utah, the laws of the provisional government of the "State of Deseret" were declared to be legal and in full force (Appendix B, Laws of Utah, 1851 to 1870, page 108). On the 19th of January, 1855, the ordinance of the "State of Deseret" of the 8th day of February, 1851, above cited, was re-enacted by the legislature of the Territory of Utah (Rec., pp. 1 and 82). The charter thus established is the alleged contract whose obligation is claimed by the appellants to be impaired.

THE ALLEGED ANNULMENT.

The laws enacted by which the alleged contract are said to be impaired are:

(1) *The act of the 1st of July*, 1862 (*Appendix C*; 12 *U. S. Stats.*, 501).

The first section of this act defines polygamy, and provides for its punishment.

The second section disapproves, and annuls by name, the charter of the corporation set up as a contract in this case, and all acts of the legislature of the Territory of Utah "which establish, support, maintain, spread, or countenance polygamy," with a proviso reserving the vested rights legally acquired under the alleged charter.

The third section declares it to be unlawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in excess of the value of $50,000, and forfeits and escheats to the United States all over that amount.

(2) *The thirteenth, fourteenth, seventeenth, and twenty-sixth sections of the act of the 3d of March*, 1887 (*Appendix D;* 24 *U. S. Stats.*, 635).

The thirteenth section enjoins on the Attorney-General the duty of instituting and prosecuting proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of the act of 1862, or of section 1890 of the Revised Statutes.

The fourteenth section authorizes summary proceedings to obtain possession of the books and papers in the suits for escheat and forfeiture provided for in the acts.

The seventeenth section disapproves and annuls the charter involved in this case, dissolves the corporation, with grant of jurisdiction to the supreme court of Utah in the proceeding for the enforcement of the act and to wind up the affairs of the corporation, and provides for the transfer of the title to such property, held or owned by it, as is excepted from escheat or forfeiture, to trustees, provided for in the twenty-sixth section.

The twenty-sixth section authorizes religious societies, sects, and congregations to hold certain real estate not subject to escheat or forfeiture, and provides for the appointment of trustees for that purpose.

Section 1890 of the Revised Statutes, referred to in the thirteenth section of the last act, is substantially a reenactment of the third section of the act of 1862.

That these acts of Congress, if valid, dissolve the corporation and annul its charter, if it ever had a legal existence, can not be disputed.

II.

THE VALIDITY OF THE ACTS.

A.

The general power of Congress over the Territories.

The general principle on which the Government of the United States is founded is, that it is a nation in which the people, organized as States, shall enjoy the right of self-government. As a temporary exception to this general principle the Constitution contemplates that territory uninhabited, or but sparsely settled, may be owned or acquired, in which no State organization exists. For the interval of time which intervenes between the uninhabited wild and the organized State, the full power of sovereignity is vested in Congress. The 2d clause of the 3d section of the IV article of the Constitution provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

This grant, in connection with the power to acquire, confers general legislative powers on Congress over the Territories. When Congress organizes a Territory the organic act is substantially its constitution. Congress, as to the Territories, acts as and for the people in making or amending this constitution. Every law passed by the Territorial legislature must be within the powers conferred by the organic act, and subject to every limitation imposed by it. Without an express reservation, Congress may repeal Territorial laws, and notwithstanding the organic act, may legislate for the Territory. If, in the organic act, power to repeal all laws is expressly reserved, that reservation is an addition to the general power inherent in Congress, and is full notice that any legislative charter, being a law, is subject to repeal or annulment.

In the case of *National Bank* vs. *County of Yankton*, decided in 1879 (101 U. S., 133), in discussing this subject Chief-Justice Waite, delivering the opinion, declared:

> The Territories are but political subdivisions of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

> In the organic act of Dakota there was not an express reservation of power in Congress to amend the acts of the Territorial legislature, nor was it necessary. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the Territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the Territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States.

In the case of the *American Insurance Company* vs. *Canter* (1 Peters, 542), Chief-Justice Marshall, rendering the opinion, said :

> Perhaps the power of governing a Territory belonging to the United States, which has not by becoming a State acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned.

Speaking of Territorial government in *Benner* v. *Porter* (9 How., 242), this court said :

> They are legislative governments, and their courts are legislative courts ; Congress, in the exercise of its powers in the organization and government of the Territories, combining the powers of both the Federal and State authorities.

See also *Scott* vs. *Sanford*, decided in 1856 (19 How., 443).

These authorities sufficiently establish that Congress possesses the general power of sovereignty over the Territories.

B.

The power to repeal was reserved in the organic act.

The alleged charter in this case was granted by the Territorial assembly. If valid, it is a law.

> In the United States, where written constitutions define the powers of the different branches of the Government, the power of chartering corporations belongs to the legislature only (Morawetz on Private Corporations, section 8).

The organic act being the constitution, the legislative power vested in the legislative assembly of Utah is found in the 6th section of the act of the 9th of September, 1850 9 U. S. Stats., 454), and is:

> *And be it further enacted*, That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect.

The last clause of this section is re-enacted in the Revised Statutes, section 1850, as follows:

> All laws passed by the legislative assembly and governor of any Territory, except in any Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and if disapproved shall be null and of no effect.

Before the alleged charter set up in this case was granted, the organic act of the Territory of Utah established a rule, without an exception, that "all the laws" which might be passed were subject to the examination of Congress, and if on examination and consideration they were disapproved, they should be null and of no effect. This clause, in contemplation of law, has the same effect as though it had been distinctly and specially written in every law passed. Had this condition been incorporated literally in the charter under consideration, it would have been no more effective than it is as incorporated in the fundamental law. If it had been so incorporated, it would certainly admit of no question that Congress could by disapproval annul the charter. The power to annul is a condition subsequent established by law in every charter granted by the legislative assembly of the Territory. It does not require that every act of the legislature shall be sanctioned by Congress to give it validity. If an act be otherwise within the legislative power granted, the laws of the Territory take effect from the date of the approval by the governor; but every law took effect subject to the condition that Congress could afterwards, at its discretion, annul it.

In the case of *Miner's Bank* vs. *The United States* (1

Iowa, 553) the clause in the organic act of Wisconsin was identical with that of the organic act of Utah (see 5 U. S. Stats., 13). A charter was granted by the legislature of Wisconsin on the 30th of November, 1836, to the bank. In the twenty-third section of the act of incorporation it is provided:

> That if the said corporation shall fail to go into operation, or shall abuse or misuse their privileges under this charter, it shall be in the power of the legislative assembly of the Territory to annul, vacate, and make void this charter.

On the 3d of March, 1837, Congress disapproved and annulled certain provisions of the charter of the bank. On the 12th of June, 1838, the Territory of Iowa was formed out of part of Wisconsin, and included the location of the bank. The organic act of Iowa had a clause identical with that of Wisconsin. In 1845 Iowa was admitted as a State. On the 21st of May, 1845, its legislature passed a law repealing the charter of the bank. The constitutionality of that law was one of the main questions raised in the case. The supreme court of Iowa sustained the act. Hastings, C. J., delivering the opinion of the court, used the following language (page 566):

> However oppressive it may appear for a party to a contract to reserve the right of rescinding the same at pleasure, or upon the occurrence of events of the existence of which he is to be the judge, yet that a party has a right to make such a reservation will not be questioned. The members of the legislature are the agents of the public, and are presumed to have no personal interest to serve other than what pertains to their constituents in common with themselves.

> They act in a fiduciary capacity, and are not amenable to the odium attached to a party who reserves the right of being a judge in his own case.

The case was appealed to the Supreme Court of the United States, and is found reported as *Miner's Bank* vs. *State of Iowa* (12 How., 1). In that case Justice Daniel, delivering the opinion of the court, said (p. 8):

> Congress, in creating the Territorial governments, and in conferring upon them powers of general legislation, did not, from obvious principles of policy and necessity, ordain a suspension of all acts proceeding from those powers until expressly sanctioned by themselves, whilst, for considerations equally strong, they reserved the power of disapproving or annulling such acts of Territorial legislation as might be deemed detrimental. A different system of procedure would have been fatal to all practical improvement in those Territories, however urgently called for; nay, might have disarmed them of the very power of self-preservation. An invasion or insurrection, or any other crisis demanding the most strenuous action, would have had to remain without preventive or remedy till Congress, if not in session, could be convened, or, when in session, must have awaited its possibly procrastinated aid.
>
> The argument would render also the acts of the Territorial governments, even the most wholesome and necessary, and though indispensably carried to the extreme of authority, obnoxious to the charge of usurpation or criminality. The reverse of this argument, whilst it is accordant with the investiture of general legislative power in the Territorial governments, places them in the position of usefulness and advantage towards those they were bound to foster, and subjects them at the same time to proper restraints from their superior.

The clause of the charter in that case by which the right to repeal was reserved to the legislature was not as broad as the general power reserved by Congress in the organic act of the Territory of Utah. When the alleged charter of the appellants now under consideration was accepted, each and every one interested in it, knew that, while the legislative assembly might grant lawful charters, yet each charter was subject to the condition subsequent that, upon cause satisfactory to Congress, the power was reserved to annul it. There is no limitation of time within which the power to annul may be exercised. The time when, and the circumstances justifying the use of, the power, are left to be determined by Congress.

In Morawetz on Corporations, section 1106, the same principle is thus stated:

> *Power of alteration may be reserved by constitution or by general law.*—The right to repeal or alter the charter of a corporation may be reserved by the State through a general provision in the constitution of the State, or a general act of the legislature applicable to all corporations, as well as by the terms of the charter granted to the company. A constitutional or legislative provision of this character establishes a rule of construction governing all future grants of corporate franchises. Every charter or general incorporation law enacted thereafter must be read as containing a reservation of the right to repeal or alter it at pleasure, no express provision to this effect being required.
>
> The power of the legislature to repeal or alter a charter depends wholly upon its agreement with the grantees. A general act providing that charters shall be subject to the right of repeal or alteration

> merely fixes the meaning to be attached to future grants. Hence a law repealing such general act does not operate as a surrender of the power to alter charters already granted. It repeals the rule of *construction* applying to future grants, but does not alter the legal effect of existing charters.

In the case of the *Holyoke Company* vs. *Lyman* (15 Wall., 522), where the legislature, by a general law, had reserved the right to annul or repeal charters, this court ruled:

> Charters subsequently granted must be understood as standing just as they would if that reservation of the power to amend, alter, or repeal the same had been incorporated into each charter.

In the case of *Miller* vs. *The State* (15 Wall., 478), a clause of the constitution of New York provides,

> Corporations may be formed under general laws, but shall not be created by special act, except in certain cases. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed—

after the ratification of which, an act was passed giving to the city of Rochester seven directors out of thirteen, instead of four, as provided in the organic act. On a *quo warranto* proceeding, the constitutionality of the latter act was sustained—Clifford, justice, delivering the opinion of the court, declaring (p. 488):

> Where such a provision is incorporated in the charter, it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power can not be regarded as an act within the prohibition of the Constitution.* Such power also, that is the

* *Pennsylvania College Cases*, 13 Wallace, 213.

> power to alter, modify, or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all acts of incorporation, or to certain classes of the same, as the case may be; in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition nor any allusion to such a reservation.

In the case of *Tomlinson* vs. *Jessup* (15 Wall., 455), the facts were that in 1841 the State of South Carolina passed a general law declaring:

> It shall become part of the charter of every corporation, which shall, at the present or any succeeding session of the general assembly, receive a grant of a charter, or any renewal, amendment, or modification thereof (unless the act granting such charter, renewal, amendment, or modification shall in express terms except it), that every charter or incorporation granted, renewed, or modified as aforesaid, shall at all times remain subject to amendment, alteration, or repeal by the legislative authority.

In 1851 the Northeastern Railroad Company was chartered by an act which did not except it from the provision of the act of 1841, but exempted its property from taxation. Subsequently acts were passed taxing the property of the railroad. These latter acts were sustained. Justice Field, delivering the opinion of the court, ruled (p. 458):

> The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its

> entire revocation. The original corporators, or subsequent stockholders, took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation.

The principle is further enforced in the case of the *Chesapeake and Ohio Railway* vs. *Miller* (114 U. S., 176), and is illustrated in the case of *Shields* vs. *Ohio* (95 U. S., 319), and *Spring Valley Water-Works* vs. *Schottler* (110 U. S., 347).

In the *Sinking Fund Cases* (99 U. S., 700–748) Justice Bradley, in the dissenting opinion, said:

> It seems to me that this clause has been greatly misunderstood. It is a sort of proviso peculiar to American legislation, growing out of the decision in the Dartmouth College case.
>
> * * * * *
>
> In my judgment the reservation is to be interpreted as placing the State legislature back on the same platform of power and control over the charter containing it as it would have occupied had the constitutional restriction about contracts never existed, and I think the reservation effects nothing more.

If the "constitutional restriction about contracts did not exist" the power of dissolution is within the scope of

legislative powers, and the corporation may be dissolved, "by act of Parliament, which is boundless in its operation" (1 Blackstone's Com., 485).

We maintain therefore that the alleged contract set up in this charter was not impaired by the repealing acts, as the power exercised is the express power reserved, which entered into and constituted a part of the alleged contract.

C.

The alleged charter is void, because the power exercised in the passage of the act of incorporation is among the powers forbidden by the Constitution.

The first article of the amendments to the Constitution declares:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

The organic act of the Territory of Utah, being an act of Congress, conferred no power which the Constitution forbade. Its sixth section (Appendix E, 9 U. S. Stats., 454) is:

> *And be it further enacted*, That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

> All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect.

The grant is only of "all rightful subjects of legislation consistent with the Constitution of the United States."

The alleged charter is, respecting and for the purpose of establishing a religion by law. (Appendix A.)

Its first section grants corporate life, with its usual incidents:

> To such portion of the inhabitants of the State of Deseret as were or might be known as the Church of Jesus Christ of Latter-Day Saints.

Its second section grants the right—

> To receive, hold, buy, sell, manage, and use and control the real and personal property of the said Church, which said property shall be free from taxation.

Its third section is the potential grant of the alleged charter. That section is (Appendix A):

> *And be it further ordained*, That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that such church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and

criterions for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses relative to fellowship according to church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association, and domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: *Provided, however*, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality and are not inconsistent with or repugnant to the Constitution of the United States or of this State and are founded in the revelations of the Lord.

This section founds the rights of the church on both constitutional and *original* grounds. The word "original" implies outside of and above the Constitution. It refers to the inherent natural rights of man, and the phrase includes both constitutional and natural. It alleges those rights are both "civil and religious" rights. The word "civil" in this clause signifies "governmental"—the right by law as distinguished from religious or ecclesiastical rights. By this it appears to be meant to announce that the law of the land may be lawfully invoked to enforce religious duties and obligations. Those rights, so far as enumerated, are:

(1) To worship God according to the dictates of conscience.

Of this right, if the worship involved no overt acts of wrong or crime, the right is civil, as it is guaranteed by the Constitution. But the right to "worship God" does not include the right to wrong our fellowmen.

> (2) To reverence communion agreeably to the principles of truth.
>
> (3) To solemnize marriage compatible with the revelations of Jesus Christ.

This includes polygamous marriages, for the doctrines of the church inculcate, that such marriages are compatible with the revelations of Jesus Christ.

> (4) For the security and enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all.

These assert the civil or governmental right to be secured by law, affirmatively granting all the blessings and privileges assured or enjoined by the church. They embrace plural and celestial marriages, as well as all other alleged religious privileges. After this comprehensive measure of rights is announced, the power to enforce the duties and secure the privileges is conferred by law on the alleged corporation. The charter proceeds:

> It is also declared that said church does and shall possess and enjoy continually the power and authority, *in and of itself*, to originate, make, pass, and establish rules, regulations, *ordinances*, *laws*, customs, and criterions for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses relative to fellowship, according to the church covenants.

This clause empowers the corporation, *in and of itself*, without reference to any other government, to pass laws and ordinances, to impose punishments and remit them, without limitation, except such as are provided by the covenants of the church. These covenants are the doctrines, dogmas, and customs of the church, in their full breadth. They are subject to change and modification by the church. These are authorized to be enforced by punishments according to laws, ordinances, and rules, to be fixed by this corporation. Under this power, the breach of a law or ordinance which forbade heresy by a member, might be made punishable with death. The powers of the Inquisition, whose memory is one of the chief elements of and whose existence gives to a period of the world's history the name of "The Dark Ages," might be revived and asserted. The proviso of the section extends and defines the grant, so as to embrace the enforcement of every religious duty promulgated by the church. It is:

> *Provided, however*, That each and every act or practice so established or adopted, for law or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, *endowments, tithings, marriages*, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, and performances, support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States, or of this State, and are founded on the revelations of the Lord.

The words "so established" refer to the words "ordinances, laws," etc., of the last clause quoted. This clause extends the law-making power of the corporation so as to

embrace generally all the duties of man to his Maker. Among others, it extends it specially to tithing, or collecting tithes. Tithes have a known, well-established, legal signification. They are incorporeal hereditaments, "which are defined to be the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants." (2 Bl. Com., 24.) Their origin is found in the code of the Jewish theocracy. They were adopted in England as early as A. D. 786, by ecclesiastical decree. Within a short time thereafter they were enforced by municipal law, and became one of the first and strongest links that united Church and State in that kingdom. About the same time their payment was established in France, and the proceeds were divided into four parts: "one to maintain the edifice of the church; the second to support the poor; the third, the bishop, and the fourth, the parochial clergy."

"Tithe" is a technical word, both in ecclesiastical and common law.

When technical words are used in a statute, they are to be taken in a technical sense. (Sedgwick on Stat. and Con. Law, 261.) Tithing is a taxing. By the act of incorporation this alleged corporation is authorized to levy and collect the tax by laws or ordinances made by the corporation for church purposes. It is not to be a voluntary giving, but a tithing, imposed and collected by law, with ample power to enforce the law. This power extends over "all that portion of the inhabitants of said State which now are or hereafter may become residents therein, and which are known and designated as the

Church of Jesus Christ of Latter-day Saints." (Section 1 of charter.)

The power of the corporation extends not over the Territory of Utah alone, but over so much of the public domain as was embraced in the provisional State of Deseret. That State is thus described in a report of the Judiciary Committee of the Forty-ninth Congress, No. 2735 (Appendix F):

> The proposed State was about 700 miles from east and west and from north to south, comprising about 490,000 square miles, or 313,600,000 acres, an area nearly as large as that of nearly all the States situated south of the Potomac and Ohio Rivers and east of the Mississippi River. It embraced the present Territories of Utah and Arizona, the State of Nevada, and considerable portion of California, Idaho, Wyoming, and Colorado.

This provisional State, as thus described, embraced substantially all the localities in which the Mormon Church had any considerable membership. By virtue of the powers contained in the charter, the church could enforce its doctrines, dogmas, interpretations of revelation, and alleged revelations, and collect its revenues, not by the mere force of right and truth alone, but by the physical force of the municipal law. If like charters were granted by Congress to each of the Christian churches, religion would be substantially established by law throughout the nation. The fact that the establishment might be by several laws instead of by one, does not change the principle, for the word "law" in the constitutional prohibition is used in its generic sense, and includes every species of law which

tends to or constitutes a part of a system by which Church and State may be united. Hence, we maintain, this alleged charter gave birth not to a legal corporation, but only to a corporation *de facto*.

D.

If the charter was a valid one, it was a public corporation, and therefore not within the principle announced by this court in the case of Dartmouth College vs. Woodward.

As has been shown under the last head, the Territorial law granting the charter in its third section announced and granted certain political and religious rights. It then authorized this corporation to pass laws and ordinances to enforce those rights. The corporation was not organized because the members of the church throughout the land voluntarily asked to be incorporated and subjected to the laws and ordinances promulgated by it, but because the *rights* were civil and religious. The only means of endowing the corporation with funds to carry out its purposes is by virtue of its laws and ordinances, and among these is the right to tithe. Under the word "receive," in the second section, it is possible a donation might have been received by the alleged corporation, but the same right exists generally in a poor district, or any other municipal corporation.

The fact that an organized and voluntary association of the same name, owning some property, might have conveyed a part or all of its property to the corporation, as

such conveyance is not recognized as the basis of endowment, and that it would do so, is not a condition on which the life of the corporation depended, and in the absence of which the corporation would be restrained from levying its tithes and buying property, should not be accepted as sufficient to constitute that voluntary association its endower. A private corporation is—

> One formed by the voluntary agreement of its members. Public corporations are not voluntary associations at all, and there is no contractual relation between the incorporators who composed them. (Morawetz on Corporations, § 3.)
>
> A corporation is commonly called public when it has for its object the government of a portion of the State, and although in such a case it involves some private interest, yet as it is endowed with a *portion of political power*, the term public has been deemed applicable (A. & A., Corp., sec. 14).

See also *Dartmouth College* vs. *Woodward* (4 Wheat., 668 to 680).

It does not appear either from the facts or from the act of incorporation that there was any agreeement between the members of the church to submit their civil and religious rights to the administration of this corporation.

The first finding of fact is, that it was organized and existed under and in pursuance of an ordinance enacted by the legislature of the Territory of Utah. The ordinance or law gave it life, and gave to it both the powers and endowments of the corporation. The law gave it the power to enforce religious and civil duties. The law gave it the means to carry out its alleged purposes, by enacting laws and ordi-

nances and levying taxes on its membership. The only redress left to the members to relieve themselves from its control, even if that existed untrammeled, was to withdraw from church fellowship, or move out of the limits of the State of Deseret. But the same right exists with reference to other municipal corporations. If the citizen moves, and remains out of its limits, the power to tax, or pass laws obligating him, is lost to any municipal corporation. The act of incorporation clearly shows that the consent of the members of the church was neither asked nor relied on as the source from which the corporation derived its power, for that power is extended by the first section of the act over all the inhabitants of the so-called State of Deseret who are known and distinguished as the Church of Jesus Christ of Latter-Day Saints. Such inhabitants are corporators, if so known or located, whether they will or not. This conclusion is rendered inevitable by the language used, which is, "which now are or hereafter may become residents therein." If a person came from any land on earth, and was known as a member of the said church, he, by merely moving in, became a member of the corporation, and subjected to its laws. If he did not wish to become subject to the burdens, his only alternative was to stay out of the said State. If he resided therein at the time of the passage of the law and wished to be relieved from its burdens, his only remedy was to abjure his religion, or move out of the locality embraced in the charter. Residence, to all the people who were known by a particular name, was the test of membership. The element of consent did not exist. The act became a law, if a law at all,

solely by force of the Government's legislative power. The Government was its founder, and, so far as its charter shows, its power to tax was its source of revenue and endowment.

It is therefore concluded that, as the alleged corporation was not a voluntary one; that it was endowed by taxation under the law and not by voluntary contributions; that it was granted political powers by law and not by any act of the parties subject to it, it is a public corporation. If a public corporation, the right is thus stated by A. & A., Corp., sec. 31:

> The main distinction between public and private corporations is, that over the former, the legislature, as the trustee or guardian of the public interest, has the exclusive and unrestrained control; and acting as such, as it may create, so it may modify or destroy, as public exigency requires or recommends, or the public interest will be best subserved. The right to establish, alter, or abolish such corporations, seems to be a principle inherent in the very nature of the institutions themselves; since all mere municipal regulations must, from the nature of things, be subject to the absolute control of the government. Such institutions are the auxiliaries of the government, in the important business of municipal rule, and can not have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature; because there can be no reciprocity of stipulation; and because their objects and duties are incompatible with everything of the nature of compact. And a municipal corporation may be abolished, although it is the trustee of a public charity.

E.

Even if the corporation was a legal private one, its charter was rightfully dissolved, for misuse and abuse of its corporate powers.

Polygamy, among all the enlightened nations of Europe, for generations, has been a crime. It has by law been declared criminal under most, if not all, the States of the Union since the Revolution. By the act of the 1st of July, 1862 (Appendix C), it is made a crime in all Territories subject to the United States. The use by a corporation of its property and powers to promulgate and maintain polygamy and its practice is a misuse and abuse of the corporate powers. Among the facts found in this case are the following (Rec., p. 97):

> That the said personal property hereinbefore set out had been accumulated by said late corporation prior to the passage of said act of February the 19th, 1887, and that such accumulation extended over a period of twenty years or more; that prior to and at the time of the passage of said act the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets, and practices of the said late church corporation, but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy; that since the passage of the

said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of —— corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.

From this it appears not that the corporation used its powers to teach polygamy as an abstract right and duty, but that it maintained and spread the *practice*, which is an overt act; that, as a consequence, a portion of its members, not exceeding 20 per cent., were guilty of the crime. In the Territory of Utah alone, 20 per cent. would equal 30,000. In the whole domain embraced in the provisional State of Deseret, which is subject to the charter, the number would be largely increased. If the law-making power of the corporation prior to 1862 warranted it in legalizing the practice, that law-making power, so far as that crime was concerned, was taken away by the passage of the act of 1862. Under the police powers of the Constitution, Congress could at least lawfully annul the power to commit a crime. The facts then found establish that since 1862 the charter has been used to maintain and spread crime. This is an abuse of its powers, and subjects the corporation, whether public or private, to dissolution. The misuse or abuse of the privileges conferred are ground for forfeiture. (A. & A. Corp., sec. 766; *Terrett* vs. *Taylor*, 9 Cranch., 43; *Dartmouth College* vs. *Woodward*, 4 Wheat., 663.)

The act of 1887 affords *prima facie* evidence that the facts existed and warranted forfeiture on these grounds (*Erie and North-East Railroad Co.* vs. *Casey*, 26 Penna. State, 303). The act provides for judicial proceedings, and as in these proceedings the facts are established judicially, the forfeiture is lawful. (*Miner's Bank of Dubuque* vs. *United States*, 1 Iowa, 562 and 563.)

F.

But whether the alleged corporation was legal or de facto, public or private, or had or had not abused its powers, it was rightfully dissolved under the police powers of the Government.

Police powers are thus defined:

> By this "general police power of the State persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which no question ever was or upon acknowledged general principles ever can be made, so far as natural persons are concerned." Blackstone defines the police power to be "the due regulation and domestic order of the kingdom, whereby the inhabitants of a state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations."
>
> Judge Cooley says: "The police of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses

against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as it is reasonably consistent with a like enjoyment of rights by others." The continental jurists include, under the term *police power*, not only those restraints upon private rights which are imposed for the general welfare of all, but also all the governmental institutions, which are established with public funds for the better promotion of the public good and the alleviation of private want and suffering. (Tiedeman's Limitations of Police Power, page 2.)

Police control of corporations. It has been supposed that, because it is the settled law of this country that the legislature of a State can not repeal or amend the charter of a private corporation, unless the power is expressly reserved, these perpetual corporations are placed beyond the reach of the ordinary police power of the State.

* * * * *

Such a construction of the operation of this constitutional provision is not only scientifically absurd, but it is in violation of the ordinary rules of constitutional construction, which provide for a strict construction of all grants by the State to the individual. Apart from the question whether the State can barter away its police power, the intention of a legislature to place a private corporation beyond the reach of the police power of the State, to grant to a corporation the right to do what it pleases in the exercise of its corporate powers, it matters not how much injury is inflicted upon the public, and yet be subject to no control or restraint, which is not provided by the laws in force when the charter was granted, is so

> manifestly unreasonable that we can not suppose that the legislature so intended, unless this extraordinary privilege is expressly granted. It can not be implied from the grant of the charter. The subjection of existing corporations to new police regulations does not involve a repeal or amendment of the charters, for an act of incorporation simply guarantees to the incorporators the right to act and do business as a corporate body, subject, of course, to the laws of the land and the legitimate control of government. The legal *status* of the corporation, as an artificial person, does not differ from the natural person, except so far as the charter may reserve or grant special privileges or impose peculiar burdens. (*Ibid.*, page 576.)
>
> To recognize in a legislature the power by a contract to tie the hands of all future legislatures, and deprive them of the power to interpose regulations that may become needful as a protection to the public against the aggressions or other unlawful acts of the corporation, would be a specimen of political suicide. It has, therefore, been often decided in the American courts, Federal and State, that the State can not barter away or in any way curtail its exercise of any of those powers which are essential attributes of sovereignty, and particularly the police power, by which the actions of individuals are so regulated as not to injure others; and any contract by which the State undertakes to do this is void, and does not come within the constitutional protection. (*Ibid.*, 580.)

This power is exhaustively discussed and enforced by illustrations and references to many adjudicated cases, by Justice Harlan in the case of *Mugler* vs. *Kansas* (123 U. S., 623 and 657 to 663).

In the case of *Stone* vs. *Mississippi* (101 U. S., 814) the State had chartered a lottery company on the 16th day

of February, 1867. On the 1st day of December, 1869, a constitution was ratified forbidding the chartering of lotteries or the sale of lottery tickets. On the 16th of July, 1870, an act was passed enforcing the provisions of the constitution and making it unlawful to conduct a lottery in the State. The last act was sustained in the court below, and in this court Chief-Justice Waite, delivering the opinion, said (pp. 817 and 818):

> All agree that the legislature can not bargain away the police power of a State. "Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State, but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police." *Metropolitan Board of Excise* vs. *Barrie*, 34 N. Y., 657; *Boyd* vs. *Alabama*, 94 U. S., 645. Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power than to give an abstract definition of the power itself which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals.

In the case of *Reynolds* vs. *United States* (98 U. S., 145) Reynolds was found guilty on an indictment for bigamy, brought under the first section of the act of 1862 (Appendix C, section 5352, Rev. Stat.). Among other defenses he alleged bigamy, as taught and practiced by the Church of Jesus Christ of Latter-Day Saints, was a part of his religious belief and duty; that for the non-practice of it he would be punished; that the second marriage

was in accordance with the laws and ordinances of the church (this corporation), and asked that he be acquitted on that ground. The court below refused his request and sustained the first section of the act of 1862. The judgment was affirmed by this court.

Bigamy is therefore a crime, and has been since 1862, in the Territories of the United States. Being a crime it affects the public well-being and morals. It is generally accepted as more pernicious and baneful in its effects than lotteries, which was the wrong which justified the revoking of the charter rights of the corporation in the case of *Stone* vs. *Mississippi*, above cited. This corporation maintained and spread the *practice* of polygamy, which is immoral and criminal. By virtue of its alleged corporate rights it had led from thirty to fifty thousand people into the commission of crime, and still its influence and wealth are used in favor of criminality. It therefore became a fit subject for the application of the police powers as applied by Congress in the passage of the acts of 1862 and 1887.

CONGRESS HAD THE POWER TO DECLARE THE DISSOLUTION OF THE CORPORATION DIRECTLY, WITHOUT A JUDICIAL DETERMINATION OF THE FACTS.

Reservation by legislature of power to repeal or change charter. If the power to repeal a charter be reserved, the exercise of the power is merely carrying out the contract according to its terms, and the State is exercising its rights, not forfeiting those of the corporation. The power to repeal is something reserved absolutely, so that the franchises of the cor-

poration may be revoked whenever the legislature shall think proper. It is sometimes revoked conditionally, to be exercised only upon the happening of a certain event, in which case the charter is repealable when the event happens. If there is a reservation of the right to repeal a charter when certain conditions are violated, and the violation is committed, a repeal will not be breaking the bargain, but keeping it; not impairing, but enforcing the obligation of the contract. The most that can be said is, that the repeal is void if it comes before the event. If the corporators desire to contest the validity of the repealing act, they must at least prove that the event did not occur (2 Waterman on Law of Corporations, pp. 881 and 882).

In the case of *Miner's Bank* vs. *United States* (1 Iowa, 562) the court ruled:

It is argued that the investigation of the facts to be inquired into, and found to exist, as an abuse or misuse of privileges of the corporation was a judicial act; that before the legislature had a right to repeal the act of incorporation such facts must have been judicially ascertained. It is conceded that without any reservation of the right to repeal, the judicial tribunals would have the power to annul and make void the charter upon ascertaining, by a proper issue, such misuse and abuse.

If, then, it were now necessary to form an issue in the courts and judicially investigate such facts, it would seem absurd in the legislature to have reserved the right thereafter to repeal, when the same end could be accomplished as substantially and more speedily by the court which tried the issue. Such reasoning must lead to the inference that the clause providing for a repeal means nothing.

In the case of *Erie and North-East Railroad* vs. *Casey* (26 Penna. State, 302) it is ruled:

> The plaintiff's counsel insist that inasmuch as the right to repeal depended on matter of fact, the right could not be exercised until the fact was ascertained by a judicial trial. But if this were not a mistake the reservation would be nugatory. When the abuse of a charter is judicially ascertained the corporation will be dissolved without the intervention of the legislature, and the court could not decide the fact to be true without pronouncing the judgment of forfeiture. The legislature certainly meant to reserve something more than the right to dissolve the corporation after it shall be dissolved by a court. The power to kill what is already dead is no power at all. The argument of the plaintiffs on this point is altogether unsustained by authority. There are several cases directly against it.

The alleged corporation was, therefore, lawfully and rightfully dissolved on all the several grounds we have contended for.

III.

THE RIGHT IS THE SAME WHETHER THE CORPORATION EXISTED AS A CORPORATION DE JURE OR DE FACTO.

The organization of the Church of Jesus Christ of Latter-Day Saints, concerning which the seventeenth section of the act of 1887 declares the act of incorporation,

> So far as the same may now have any legal force and validity, are disapproved and annulled, and the said corporation is, so far as it may now have or *pretend to have* any legal existence, is hereby dissolved

clearly contemplates that the corporation might be either corporation *de jure* or a corporation *de facto*; and, in either event, its dissolution would be equally just and effective under the act. If the corporation from its inception had, under the forms of a lawful organization, without its substance, proceeded to organize (which it did), and exercise the powers of a legal corporate body, it would be from the beginning a corporation *de facto*. If, without judicial declaration of dissolution, after the passage of the act of 1862, it still exercised all its corporate functions, and by its acts asserted corporate life, it, and all who dealt with it and recognized it to be a corporation, would be estopped from denying its corporate existence, and, in contemplation of law, it would continue to be a corporation *de facto*.

> The courts have in some instances failed to bear in mind the distinction between the actual existence of a corporate association and the legality of such an association after it has been actually formed. It seems to have been assumed, in some of the cases, that a corporate association formed in violation of the general rule of the common law prohibiting such associations must necessarily be treated by the courts as a nullity—as no corporation at all. This doctrine is not only founded on a misconception, but is in most instances unjust in its consequences. It is certainly not an enlightened method of administering justice, to lay down as an arbitrary rule that an accomplished fact shall be ignored and treated as non-existing. If a corporate association has actually been formed in violation of the law, the courts can generally best serve the interests of justice by recognizing the asso-

ciation as a corporation, although an unlawful one, until its actual existence has been terminated by direct means (2 Mor. Priv. Corp., sec. 745).

Transfers of property by or to a corporation de facto are valid. A grantor who has conveyed property to a corporation existing *de facto* can not, after having received the consideration money, treat the conveyance as a nullity merely because the corporation was formed without legislative authority. The transfer will be held valid and binding as against all parties but the State. It is equally well settled that a conveyance executed by a corporation will not be treated as invalid merely because the corporation was not formed under authority of law. A grantee who has received a conveyance from a company acting in a corporate capacity can not, when called upon to pay the purchase money, set up as a defense that the company was a self-constituted corporation having no legal powers.

So a mortgage executed by or to an unauthorized association may be enforced according to the contract of the parties (*Ibid.*, sec. 753).

The legal status of a corporation formed under an unconstitutional law, as that of a corporation formed under no law at all, or without complying with such laws as may exist, both with regard to the rights and obligations of its members and the rights and obligations of the corporation in respect to parties dealing with it, should therefore be the same (*Ibid.*, sec. 759).

The general rule is that a person dealing with a company which is in the user of corporate franchises can not set up that it has no corporate existence, either in consequence of acts which would cause a forfeiture of its charter or of the omission of acts which should

have been performed before it could acquire a title as against the State. One who borrows money from a corporation and gives back a mortgage as security is estopped from denying the existence of the corporation (1 Waterman on Corp., pp. 150, 151).

Of course an act of the legislature recognizing a company as a corporation will not constitute it such, if the Constitution forbids the creation of corporations except under general laws. The validity of a corporation, proceeding under color of law and recognized by the sovereign power, can not be called in question collaterally, although the act recognizing the corporation is unconstitutional (*Ibid.*, 155).

In the case of *Smith* v. *Sheeley* (12 Wall., 361), Davis, Justice, delivering the opinion of the court, ruled:

It is insisted, however, as an additional ground of objection to this deed, that the bank was not a competent grantee to receive title. It is not denied that the bank was duly organized in pursuance of the provisions of an act of the legislature of the Territory of Nebraska, but it is said it had no right to transact business until the charter creating it was approved by Congress. This is so, and it could not legally exercise its powers until this approval was obtained, but this defect in its constitution can not be taken advantage of collaterally. No proposition is more thoroughly settled than this, and it is unnecessary to refer to authorities to support it. Conceding the bank to be guilty of usurpation, it was still a body corporate *de facto*, exercising at least one of the franchises which the legislature attempted to confer upon it; and in such a case the party who makes a sale of real estate to it is not in a position to question its capacity to take the title, after it has paid the consideration for the purchase.

In the case of *Cowell* vs. *Springs Company* (100 U. S., 61), the Springs Company was a corporation, chartered in 1861 by a Territory. Its charter as to the right to hold lands, was beyond the power of the legislature, being in contravention of the act of the 2d of March, 1867, (Rev. Stat., 1889). It conveyed land to the defendant, with condition subsequent. It brought suit to recover for breach of the condition. This court (Field, justice) ruled:

> But there is another and general answer to this objection. The defendant, as already stated, went into possession of the premises in controversy under the deed of the plaintiff. He took his title from the company, with a condition that if he manufactured or sold intoxicating liquors, to be used as a beverage, at any place of public resort on the premises the title should revert to his grantor; and he is therefore estopped, when sued by the grantor for the premises, upon breach of the condition, from denying the corporate existence of the plaintiff, or the validity of the title conveyed by its deed. Upon obvious principles, he can not be permitted to retain the property which he received upon condition that it should be restored to his grantor on a certain contingency, by denying, when the contingency has happened, that his grantor ever had any right to it. *Gill* vs. *Fauntleroy*, 8 B. Mon. (Ky.), 185; *Miller* vs. *Shackleford*, 4 Dana (Ky.), 287, 288; *Fitch* vs. *Baldwin*, 17 Johns. (N. Y.), 161.

In the case of *Close* vs. *Glenwood Cemetery* (107 U. S., 477) it is ruled:

> One who deals with a corporation as existing in fact is estopped to deny as against the organization that it has been legally organized.

In this case the fact is found that the corporation existed and exercised its functions until the passage of the act of the 19th of February, 1887 (1st, 3d, and 7th findings of fact, Rec., pp. 82, 83, and 97).

It and those who dealt with it as corporators up to that date are therefore estopped from denying its existence, and are subject to the same consequences, whether it was a corporation *de jure* or *de facto* at the date of the passage of the act for its dissolution.

IV.

A RECEIVER WAS LAWFULLY APPOINTED AND RETAINED.

The corporation was dissolved by the act of 1887. It had a large amount of personal and real property. The seventeenth section of the act required its affairs to be wound up. The first step to wind up the affairs of a dissolved corporation is to have its property taken into the possession of the court for its preservation, and that it may be under its control for distribution or delivery to the person entitled to it on final decree. A receiver is an officer to take the property, and, as the hand of the court, hold it, or dispose of it, or distribute it, as the court may decree.

The act of 1887 had authorized the court to wind up its affairs. The corporation being dissolved, its officers were void of power. No one was legally authorized to take charge of the property. On the 29th day of February, 1887, ten days after the passage of the act, its late trustee in trust had attempted to give away personal prop-

erty of the late corporation of the money value of $268,982.39 (Rec., p. 113). On the 30th of June and the 2d of July, after the passage of the act, a large amount of real estate had been attempted to be given away (Rec., pp. 37, 39, and 43). On the dissolution of the corporation its property became a trust fund for the benefit of those entitled thereto (High, Recs., sec. 303). The duty to wind up, imposed on the court the care of the property during the pendency of the proceedings, and, on final decree, the duty to distribute to those entitled to it. The appointment of a receiver was, therefore, fully warranted by the law and the facts in this case.

V.

THE DISTRIBUTION OF THE PROPERTY OF THE CORPORATION.

A.

Real Property.

The real estate of the corporation by the decree was placed in the hands of a receiver, to abide the result of informations filed for its forfeiture under the provisions of the acts of 1862 and 1887 (paragraph 8 of decree, Rec., p. 101). As the corporation was dissolved, and the real estate was found to be its property at the time of its dissolution, defendants have no cause to complain as to this portion of the decree. If any of them can show that the property is not forfeited on the informations filed, after such finding, by order of the court, it can be delivered to those entitled to it. If legally forfeited, they are not interested in it.

The third section of the act of 1862 made all real estate of such corporations in excess of $50,000 in value subject to forfeiture. The real estate retained in the hands of the receiver was only that purchased or acquired after 1862 in excess of that amount (7th finding, Rec., p. 83; decree, paragraph 8, Rec., p. 101.) This made a *prima facie* case on the facts, which, on the hearing of the information, would lead to a forfeiture of the property. During the pendency of the information no one was empowered to receive or take charge of it. It was, therefore, properly directed to be retained by the receiver.

B.

Personal property.

The seventh paragraph of the decree (Rec., p. 100) escheats and distributes the personal property to the United States. As shown before, over the Territories the United States is the sovereign.

(1) *A public corporation.*

If the corporation was a public one, as we contend it was, on its dissolution its property became vested in the sovereign.

> When an act of incorporation is a grant of political power, to be employed in the administration of government, or when the whole resources of the institution are public funds, the charter is completely within the control of the legislature. Such corporations are in no way the result of contract (2 Waterman on Corp., 873).

> Public corporations can acquire no vested rights as against the Government, and no assent of the people is requisite to their creation, maintenance, or destruction (Wait, Ins. Corp., sec. 17).

In the case of *Meriwether* vs. *Garrett* (102 U. S., 501 and 511) the court ruled:

> The power of taxation is legislative, and can not be exercised otherwise than under the authority of the legislature.
>
> * * * * *
>
> The right of the State to repeal the charter of Memphis can not be questioned. Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers. There is no contract between the State and the public that the charter of a city shall not be at all times subject to legislative control. All persons who deal with such bodies are conclusively presumed to act upon knowledge of the power of the legislature. There is no such thing as a vested right held by an individual in the grant of legislative power to them.

(2) *A private corporation.*

> At common law upon the civil death of a corporation all its real estate remaining unsold reverts to the grantor or his heirs, for the reversion in such an event is a condition annexed by the law, inasmuch as the cause of the grant has failed. The personal estate in England vests in the king, and in our own coun-

try in the people or State, as succeeding to this right and prerogative of the crown. Debts due to and from it are totally extinguished. (A. & A. Corp., sec. 779.)

According to the old settled law of the land, where there is no special statute provisions to the contrary, upon the civil death of a corporation, all its real estate remaining unsold reverts back to the original grantor and his heirs. The debts due to and from the corporation are all extinguished. Neither the stockholders nor directors or trustees of a corporation can recover those debts, or be charged with them in their natural capacity. All the personal estate of the corporation vests in the people as succeeding to this right and prerogative of the crown at common law. (2 Kent's Com., sec. 307.)

In the early history of the common law the right of common occupancy attached to derelict property. But in lieu of this the presumption arose that on defect of ownership the property escheated to the sovereign. (2 Bl. Com., 11.)

In 1823, in the case of *State Bank* vs. *The State* (1 Blackford Repts. [Ind.], 282 and 283) Holman, justice, in discussing this question, says:

Secondly. As to the goods and chattels. On this subject the books are almost silent. In the argument of *Colchester* vs. *Seaber*, it is said by Sir Fletcher Norton, on the authority of 1 Ro. Ab., 816, that the goods and chattels go to the Crown. An *English* writer, who has collected together most of the cases on corporations, concludes his remarks on the effect of a dissolution in these words: " What becomes of the personal estate is, perhaps, not decided; but probably it vests in the Crown " (2 Kyd on Cor., 516).

> We do not feel under the necessity of resolving any doubts which may rest on this subject; for if the law were conclusive that the goods and chattels in this case would vest in the State on the dissolution of the corporation, yet we have already seen that this would not be as a forfeiture, but because they were without an owner, and that the claim of the State could not exist until after judgment; consequently, it is impossible to include them in the terms of the judgment.

It will be borne in mind in the present case the corporation was dissolved at the date of the passage of the act of 1887, and these proceedings are only to declare the dissolution judicially.

In 1841, in the case of *Fox* vs. *Horah* (1 Iredell's Eq. R., 358 and 361), the first clause of the syllabus is:

> When a corporation is dissolved, unless the legislature has otherwise directed, the real property which had belonged to it and remains undisposed of reverts to the donor or grantor; the personal property, as having no owner, goes to the sovereign for the benefit of the public; but *choses in action*, such as debts, etc., become extinct, because there is then no one to demand the money, etc.

Gaston, Justice, in the opinion (page 361), says:

> Goods and chattels, by the common law, were deemed of too transitory and fluctuating a nature to be susceptible of reversionary interests after an estate for life, and, on the death of a corporation, they do not revert to the grantor or donor, but, being *bona vacantia* or goods wanting an owner, they vest in the sovereign as well to preserve the peace of the public, as in trust to be employed for the safety and ornament of the commonwealth.

In the case of *White* vs. *Campbell*, decided in 1843 (5 Humph. [Tenn.], 38), the first clause of the syllabus is:

> When a corporation is dissolved or expires, its personal estate vests in the State, its real estate reverts to the original grantor and his heirs, and the debts due to and from it are extinguished.

Turley, Justice, in the opinion adopts and quotes the doctrine as stated above from Kent, and founds his decision of the case thereon.

This rule of the common law has been in most instances changed by statute so as to protect the equitable rights of creditors and stockholders.

In the case of *Mumma* vs. *The Potomac Company* (8 Peters, 281), the syllabus substantially sets forth the point ruled. It is:

> The obligation of the contracts of a corporation is not impaired by its dissolution. 1. Because its creditors contracted with reference to such a possibility. 1. Because their obligation survives, andt hey may be prosecuted against any property of the corporation which has not passed into the hands of bona fide purchasers.
>
> It is competent for a State to provide for the only practicable and equitable mode of distributing the assets of a dissolved corporation among its creditors, analogous to the distribution of the assets of a deceased insolvent debtor.

In the case of *Curran* vs. *State of Arkansas* (15 How., 304) the first clause of the syllabus is:

> On the dissolution of a corporation, its effects are a trust fund for the payment of its creditors, who may follow them into the hands of any one, not a

> *bona fide* creditor, or purchaser without notice; and a State law, which deprives creditors of this right, and appropriates the property to other uses, impairs the obligation of their contracts, and is invalid.

Curtis, J., delivering the opinion (p. 308), adopts the language of section 1252 of Story Eq. Jur. as a correct statement of the principle, as follows:

> Perhaps, to this same head of implied trusts upon presumed intention (although it might equally well be deemed to fall under the head of implied trusts by operation of law), we may refer that class of cases where the stock and other property of private corporation is deemed a trust fund for the payment of the debts of the corporation; so that the creditors have a lien or right of priority of payment on it in preference to any of the stockholders of the corporation.

He also quotes with approval (p. 312) from 2d Kent's Com., as follows:

> The rule of the common law has in fact become obsolete. It has never been applied to insolvent or dissolved moneyed corporations in England. The sound doctrine now is, as shown by statutes and judicial decisions, that the capital and debts of banking and other moneyed corporations constitute a trust fund and pledge for the payment of creditors and stockholders, and a court of equity will lay hold of the fund and see that it be duly collected and applied.

The case of *Bacon* vs. *Robertson et al.*, decided in 1856, (18 How., 488), was a bill in equity by stockholders of the Bank of Natchez against a receiver, claiming right to a portion of the funds of the dissolved corporation; a

statute of Mississippi had been passed prior to the dissolution saving the rights of creditors. This statute, by a later act, which was also prior to the dissolution, was enlarged to include stockholders. Campbell, J., after full discussion of the English and American precedents, thus states the conclusion as applicable to the case:

> In our view of the equity of this bill, we have the support and sanction of the legislature of Mississippi. Their legislation excludes all the consequences which have been imputed as necessary to a sentence of dissolution on a civil corporation. From the plenitude of their powers, for the amelioration of the condition of the body politic, and the supply of defects in their system of remedial laws, they have afforded a plan for the liquidation and settlement of the business of these corporations, in which the equities of the creditors and shareholders respectively are recognized, as attaching to all the corporate property of whatever description.

2d Waterman on Corp., pp. 934 and 935, thus states the present doctrine as the result of recent legislation and modern decisions on the subject:

> "The debts of a corporation, either to or from it, are totally extinguished by its dissolution, so that the members thereof can not recover or be charged with them in their natural capacities." This harsh and inequitable rule has not been favored by the courts or legislatures of this country, and it is doubtful whether it was ever adopted to the fullest extent here. "The rule of the common law has, in fact, become obsolete. It has never been applied to insolvent or dissolved moneyed corporations in England. The sound doctrine now is, as shown by stat-

> utes and judicial decisions, that the capital and debts of banking and other moneyed corporations constitute a trust fund and pledge for the payment of *creditors* and *stockholders*, and a court of equity will lay hold of the fund and see that it be duly collected and applied."

From these citations it appears the change in the rule of the common law is confined to moneyed corporations, and that change is made only in favor of creditors and stockholders. Where no statute is found as a basis of the equitable right, the right is founded on the implied contract contained in the charter that the contracts from which the indebtedness arose, or on which the stock was taken, pledged to the creditors and stockholders the property of the corporation for their re-imbursement, and that an application of the property otherwise was a violation and impairing of that contract.

The corporation in this case is not a monyed corporation. At the time of its dissolution it had no creditors (Rec., p. 83). It had no stockholders. The rule of the common law is therefore applicable to it as applied in the seventh paragraph of the decree (Rec., p. 100).

C.

No Equities in Favor of the Voluntary Association or Intervenors.

There are no equities in this case which would justify the enlargement of the exceptions, to the rule of the common law, so as to embrace the property now in dispute.

(1) The assets of the corporation, so far as the charter

of the corporation shows, came from the power to tithe or tax much the largest class of people found in an area of 490,000 square miles.

(2) The real estate was all acquired by the corporation after the passage of the act of 1862, and was in excess of $50,000 at the time the grantees conveyed it to the corporation. They knew all right of reversion, if any existed, was cut off by that act, and their conveyances are presumed to have been made divested of all possible reversionary rights. The Temple Block by the decree is set apart to the voluntary association in accordance with the provisions of the act of 1887. The corporation acquired by purchase, for a valuable consideration, the greater portion of the residue, if not all, of the realty. A clear *prima facie* case is shown for its forfeiture. The decree only retains this realty in the possession of the receiver to abide the proceedings on the information. If the voluntary association or the intervenors have any rights superior to the rights of the Government they can there set up their claim, but can not complain of the action of the court in this case.

(3) The whole scope of the acts of 1862 and 1882, and its supplement of 1887, shows that the law-making power had in view the abolition of polygamy or bigamy within the national domain. This, being the avowed purpose of the statutes, precludes the recognition of an alleged equitable claim by any association that practices polygamy or would use its property for the propagation of it. The voluntary association and the intervenors, on the facts

found in this case, sustain the practice of polygamy, as the following findings of fact (Rec., pp. 97 and 98) show:

> That since the passage of the said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of — ——— corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.
>
> That certain of the officers of said religious sect regularly ordained, and certain public preachers and teachers of said religious sect, who are in good standing and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February the 19th, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation, and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings or their actions created any division or schism in said voluntary religious sect.
>
> That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of or in trust for the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints or any of them would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of

and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

By a memorial presented to the Forty-first Congress by what purports to be a very large meeting of the officers and members of the voluntary association, the doctrines of the church on the subject of polygamy are thus set forth:

> Gentlemen of the Senate and House of Representatives, of the 150,000 estimated population of the Territory of Utah, it is well known that all except from 5,000 to 10,000 are members of the Church of Jesus Christ of Latter-Day Saints, usually called Mormons. These are essentially the people of this Territory, they have settled it, reclaimed the desert waste, cultivated it, subdued the Indians, opened means of communication, made roads, built cities, and brought into being a new State to add lustre to the national galaxy of our glorious Union. And we, the people who have done this, are believers in the principle of plural marriage or polygamy, not simply as an elevating social relationship, and a preventive of many terrible evils which afflict our race, but as a principle revealed by God, underlying our every hope of eternal salvation and happiness in heaven. We believe in the pre-existence of the spirits of men; that God is the author of our being; that marriage is ordained as the legitimate source by which mankind obtain an existence in this probation on the earth; that the marriage relation exists and extends throughout eternity, and that without it no man can obtain an exaltation in the celestial kingodm of God.
>
> The revelation commanding the principle of plural marriage, given by God through Joseph Smith, to the Church of Jesus Christ of Latter-Day Saints, in its first paragraph has the following language: "Be-

> hold, I reveal unto you a new and everlasting covenant; and if ye abide not that covenant, then are ye damned; for none can reject this covenant and be permitted to enter into my glory." With this language before us, we can not view plural marriage in any other light than as a vital principle of our religion. Let the revelation appear in the eyes of others as it may, to us it is a divine command, of equal force with any ever given by the Creator of the world to his children in the flesh (History of Salt Lake City, by Tullidge, p. 459).

The practice of polygamy is unlawful and criminal. A court of equity can not distribute property to any one to be used to spread crime. The act of 1887, which directs the application of the fund to the use of the common schools of the Territory, is more consistent with the true interest of those from whom the property was collected than a distribution to either the voluntary association or the intervenors. The distribution, so far as provided in the 13th section of the act of 1887, is established by affirmative law, and whatever might have been regarded as the rule in equity before it was changed by the law, can not now, either in a court of law or equity, be resorted to as ground for a judicial decision. This view is very forcibly stated by Black, Justice, in the case of *Erie and North-East Railroad Company* vs. *Casey* (26 Pa., 304), as follows:

> But we are now dealing with an act of assembly, which, if it be valid, is the paramount law of the subject to which it relates; it rides down and nullifies all other laws which are inconsistent with it. Perhaps this is the very first argument that ever was made to show that a statute was void because it conflicted with a rule of the common law. To change the common law, and repeal earlier statutes, is the main if

not the only business which the legislature has to perform. A statute may be valid, no matter how inconsistent it is with the doctrine of estoppel, unless the doctrine of estoppel be a part of the constitution, which it certainly is not. When we are inquiring what the legislature can do, we are not helped a particle by being told what a court *would* do.

* * * * *

The limitations on the legislative power of the State are not to be found in the general body of the law, but only in the constitution itself, which is the *lex legum*, or law of laws.

After the preparation of the above the brief of Mr. Butler, one of the solicitors for the appellants, was received. We reserve the right to further reply to it so far as necessary on oral argument. It is suggested now that the third section of the act of 1862 not only forbids the acquiring of real estate in excess of $50,000, but also forbids the holding it, and forfeits and escheats all real estate held in violation of the act.

The replication denies that the Guardo House property was, or ever had been, used as a parsonage (Rec., p. 65). The fact is found:

That the said Guardo house and grounds were used and occupied by the said John Taylor, president of said church, from 1878 up to the time of his death, as a residence (Rec., p. 91).

The same denial is found in the replication as to the historian's office (Rec., p. 65). The fact is found—

That from the year 1848 until the time of his death, in 1875, George A. Smith was the historian

> of said church, and lived in said building with his family, and had the custody of the books, papers, and records of said church relating to its history, or public acts of its officers and members; that the same have always been kept in said building from the time of its construction until the present time, at the cost of the said church, and that such office is and has been necessary for the use of said historian in the discharge of his duties (Rec., pp. 91, 92).

The petition of the trustees for the setting apart of the "Tithing office" property does not aver that it was used as a parsonage or burial-ground, or for religious purposes (Rec., p. 67). The fact is found that ever since the alleged corporation existed it has been used and occupied for

> Receiving and disbursing tithing and voluntary contributions of property (Rec., p. 92).

In any event, as the corporation was dead, the property which the voluntary association might claim under the exceptions contained in the act should be placed in the receiver's hands for care until the right should be determined, and after the determination, if in favor of the trustees, for purpose of conveyance. If, on the hearing of the informations for forfeiture, the trustees can prove the property within the exceptions to the act, conveyances will doubtless be decreed, and account ordered, for the mesne profits received by the receiver.

A. H. GARLAND,
Attorney-General.
G. A. JENKS,
Solicitor-General.

APPENDIX.

EXHIBIT A.

An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints. (Approved February 8, 1851.)

(550) SEC. 1. Be it ordained by the general assembly of the State of Deseret, That all that portion of the inhabitants of said State which now are or hereafter may become residents therein and which are known and distinguished as "the Church of Jesus Christ of Latter-Day Saints" are hereby incorporated, constituted, made, and declared a body corporate, with perpetual succession, under the original name and style of "the Church of Jesus Christ of Latter-Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship, and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

(551) SEC. 2. And be it further ordained, That said body or church, as a religious society, may, at a general or special conference, elect one "trustee in trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation, which trustee and assistant trustees, when elected or appointed, shall give bonds, with approved security, in whatever sum the conference may deem sufficient, for the faithful performance of their several duties,

which said bonds, when approved, shall be filed in the general church recorder's office, at the seat of general church business, when said bonds are approved by said conference, and said trustee and assistant trustees shall continue in office during the pleasure of said church; and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business, and when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction and the well-being of said church.

(552) SEC. 3. And be it further ordained, That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience," to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all, it is also declared that such church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions for the good order, safety, government, conveniences, comfort, and control of said church and for the punishment or forgiveness of all offenses relative to fellowship according to church covenants; that the pursuit of bliss and the enjoyment of life in every capacity of public association, domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be ques-

tioned: Provided, however, That each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States or of this State and are founded in the revelations of the Lord.

(553) SEC. 4. And be it further ordained, That said church shall keep at every full organized branch or stake a registry of marriages, births, and deaths, free for the inspection of all members and for their benefit.

(554) SEC. 5. And be it further ordained, That the presidency of said church shall fill all vacancies of the assistant trustees necessary to be filled until superseded by the conference of said church.

(555) SEC. 6. Be it further ordained, That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property without the consent or approval of the trustee in trust of said church.

(Compiled laws of Utah, of 1876, page 232.)

EXHIBIT B.

A joint resolution legalizing the laws of the provisional government of the State of Deseret.

(1) Resolved by the legislative assembly of the Territory of Utah: That the laws heretofore passed by the provisional government of the State of Deseret, and which do not conflict with the "organic act" of said Territory, be, and the same are hereby, declared to be legal and in full force and virtue, and shall so remain until superseded

by the action of the legislative assembly of the Territory of Utah."

Approved October 4, 1851.

(Laws of Utah, 1851–1870, page 168.)

EXHIBIT C.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years: *Provided, nevertheless*, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

SEC. 2. *And be it further enacted*, That the following ordinance of the provisional government of the State of Deseret, so-called, namely: "An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints," passed February eight, in the year eighteen hundred and fifty-one, and adopted, re-enacted, and made valid by the governor and legislative assembly of the Territory of Utah

by an act passed January nineteen, in the year eighteen hundred and fifty-five, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory, their publication, and distribution," and all other acts and parts of acts heretofore passed by the said legislative assembly of the Territory of Utah, which establish, support, maintain, shield, or countenance polygamy, be, and the same hereby are, disapproved and annulled: *Provided*, That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right "to worship God according to the dictates of conscience," but only to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

SEC. 3. *And be it further enacted*, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: *Provided*, That existing vested rights in real estate shall not be impaired by the provisions of this section.

Approved, July 1, 1862.

(12 U. S. Stats., 501.)

EXHIBIT D.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the

property of corporations obtained or held in violation of section three of the act of Congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground, shall be forfeited.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

SEC. 17. That the acts of the legislative assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal exist-

ence, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.

SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation. (24 U. S. Stats., 637, 638, and 641.)

EXHIBIT E.

SEC. 6. *And be it further enacted*, That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of

the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect.

EXHIBIT F.

[Extract from report (No. 2735) of Hon. J. Randolph Tucker, chairman of the House Committee on the Judiciary, on Senate bill No. 10 (pages 3 to 9).]

The Mormon system is directly antagonistic to all ideas of European and American civilization. A family springing from the marital relation of one man to many wives seems to make a home of unity, harmony, and hearty cooperation impossible. Its elements are heterogeneous, alien, and must in most cases be hostile. If the biblical origin of our race be admitted, one man and one woman—the dual unity—constituted the Divine appointment for the family. Affection concentrated, not divided; care and protection by the man for the woman, and mutual assistance and sympathy, which are found in a wedded pair rearing a common offspring in a home from which none stray but to return with deeper devotion than ever—in which no jealousy from rival claims intrudes—and the twain become one and indivisible in life, labor, and interest. These are the essential qualities of a marriage in Christendom and of that family life which is the basis of civilization in Europe and America.

These two types of domestic life are absolutely irreconcilable and inconsistent. They can not unite; they must part. They can not coalesce; they must exist in separate nationalities.

But it will have been seen from the views stated in the former report that when polygamy assumed the garb of

religion, and clothed its deformity with the insignia of ecclesiastical and even Divine authority; when it legalized what the American States regard as crime under the higher law of God, and sought through the rapid propagation of the species under the economy of celestial or plural marriages to people the earth and occupy it with the Latter-Day Saints; when clothed in brief authority, with the assumed Statehood of Deseret, it incorporated its church, whose head was president of the State; when to all this it added another corporation, subject to the church, whose purpose was to limit emigration to propagation, to make more certain the occupation of the public domain; when it organized its militia force into a Nauvoo Legion, whose name recalled the lost capital of its kingdom; when it granted lands and rights in them to its leaders and adherents as a mode of preoccupying a large territory of the United States, and finally put its legion in battle array to oppose the army of General Albert Sidney Johnston in 1857–'58, and to Drive it back from the Territory with threats of war and with openly-proclaimed defiance—no impartial observer of these historic events from 1849 to 1858 can doubt the dangerous purpose of the leaders of the Mormon people to set up their authority in hostility to the general colonization of the Territory by the people of the Union, and a fixed ambition to make Utah the permanent seat of Mormon supremacy and power.

The events in order of time strikingly show that this statement is not fiction.

On the 18th of March, 1849, a convention of the people met, nearly a year after the proclamation of the treaty of Guadalupe Hidalgo, by which the whole territory became the property and dominion of the United States, and adopted a constitution. Its territory was immense, stated by a late writer as follows:

> The proposed State was to be 700 miles from east and west and from north to south, comprising about 490,000 square miles, or 313,600,000 acres—an area

nearly as large as that of all the States situated south of the Potomac and Ohio Rivers and east of the Mississippi River. It embraced the present Territories of Utah and Arizona, the State of Nevada, and considerable portion of California, Idaho, Wyoming, and Colorado. On the 21st of July, 1849, the legislature of Deseret convened, and declared that the constitution had been adopted, that Brigham Young, the head of the church, had been elected governor, and Heber C. Kimball, an apostle of the church, had been elected lieutenant-governor.

On September 9, 1850, the organic act for Utah became a law.

Brigham Young was commissioned governor of the Territory September 28, 1850.

Notwithstanding this, the State of Deseret passed the law incorporating the "Church of Jesus Christ of Latter-Day Saints" on the 8th February, 1851. That law was void *ab initio*, because passed by a body without any legal existence or authority to do so; a fact to be noted as important in the subsequent discussion.

The head of this corporate church was a "trustee in trust." He was Brigham Young, the governor of Deseret, and afterward of the Territory of Utah, by commission of the President.

Let it be observed that this ecclesiastic corporation was the only one created. It was the Church of Deseret. Its head was the chief executive of Deseret.

On the 5th of February, 1852, the legislative assembly of Utah organized its militia into the Nauvoo Legion (Acts of Utah, 1885, p. 207). The governor, by the constitution of Deseret, was commander-in-chief of all the militia, but this Utah law put it under the command of a lieutenant-general, commissioned by the governor and elected by the votes of the commissioned officers of the legion, and these commissioned officers were elected by a majority of the

votes of their commands. Thus the whole military power was commanded by those whose election came from the votes of the militia.

On the 12th of January, 1856 (Acts 1855–'56, p. 38), the "Perpetual Emigrating Fund Company" was legalized, which had been incorporated by the State of Deseret September 14, 1850, after the organic act of Utah became a law. That original charter was void, because passed by a body which had no existence or authority. That charter placed the company under charge of the Church of Jesus Christ of Latter-Day Saints. Its powers were well-nigh unlimited, and among the rest it had the power to emit bills of credit, a power denied by the Constitution to the States.

Without authority this people thus created the State of Deseret, established a church, and a church corporation, with the scarcely concealed design of bringing Mormons from abroad to fill a Territory of the United States with the disciples of their creed. The trustee in trust of the church, the controlling chief of emigration, the commander-in-chief of the militia, and the governor of the State were one and the same person—Brigham Young.

If we now regard this ambitious scheme for a moment, we will realize the nature and extent of its power.

The Mormon religion is based on a supposed revelation of which its priesthood is the inspired interpreter and expounder, making their influence almost absolute and their declarations almost the voice of God. The sincere among its adherents are victims of a delusion, which the insincere will be prone to maintain and promote from sinister motives and for selfish and ambitious purposes. The awful sanctions of the church give force and authority to the civil mandate. The union of the ecclesiastical power with that of the government, and of the civil and military authority in the same hands, made Brigham Young at once the hierarch of the church, the civil ruler of the

State, and the commander of its armies. Church and State, civil and military power, were united in him as the supreme autocrat of Deseret and Utah.

As has been shown in detail in the former report, the legislative power of the State of Deseret and Territory of Utah lavished upon the chiefs of the church timber, water, and herd privileges and large landed estates. It gave large portions of these to the church and its servant, the Emigration Fund Company. It organized municipal corporations with extraordinary territorial limits, and by its whole course of procedure displayed partiality to its church and its members, in private, corporate, and associated interest.

It is not a matter of wonder that the ambitious leader of his people should have evinced jealousy of the incoming of a newly appointed governor by President Buchanan in July, 1857. It is said he declared that he would not permit him to take the office. The new governor, therefore, started for Utah under military escort, increased, on account of the defiant attitude of Brigham Young, to an army, which was placed under command of General Albert Sidney Johnston.

The motives of this action by President Buchanan are explained in his annual message in December, 1857. He says:

> As Chief Magistrate I was bound to restore the supremacy of the Constitution and laws within its limits. In order to effect this purpose I appointed a new governor and other Federal officers for Utah, and sent with them a military force for their protection, and to aid as a *posse comitatus* in case of need in the execution of the laws.

President Buchanan further said in his message to Congress of December 8, 1857:

> Whilst Governor Young has been both governor and superintendent of Indian affairs * * * he

> has been, at the same time, head of the church called the "Latter-Day Saints," and professes to govern its members and dispose of their property by direct inspiration and authority from the Almighty. His power has been, therefore, absolute over the church and state.

And again:

> All the officers of the United States, judicial and executive, with the exception of two Indian agents, have found it necessary for their personal safety to withdraw from the Territory, and there no longer remains any government in Utah but the despotism of Brigham Young.

And Secretary Floyd, in his report from the War Department, said:

> From the first hour they fixed themselves in that remote and almost inaccessible region of our territory, from which they are now sending defiance to the sovereign power, their whole plan has been to prepare for a successful secession from the authority of the United States, and a permanent establishment of their own.

Governor Young issued a proclamation in the midst of these events, ordering the troops of the Territory to be ready to move at a moment's notice, and forbidding all armed forces from coming into the Territory on any pretense whatever; and General Wells, lieutenant-general commanding the Nauvoo Legion, sent to the officer in command of the United States forces a copy of the proclamation of Governor Young, and directing him "to retire forthwith from the Territory by the same route he entered."

Prudence prevented the conflict of arms, and peace was restored.

Your committee, as already stated in a former report, has no disposition to recommend any measure to the House which will invade the sanctity of any religious faith, however wrong in their opinion it may be; but the distinction between overt acts, resulting from belief which the law makes criminal, and the rights of opinion and to worship God according to the dictates of conscience, was so fully stated in the report as not to need repetition here.

In view of the history given of this people and of their actions years ago, and of the persistence with which they adhere to the polygamous relations despite the laws made to suppress crime, and of the necessity of making every constitutional effort to put the Territory of Utah into a position for admission into the Union as a State free from the presence of this criminal relation, your committee have considered the provisions of the Senate bill with great care in the sections under consideration.

It has been ably argued by counsel for the Mormons before the committee that the corporation of the church can not be annulled; that it is a private corporation; that Congress can not, any more than a State, impair the obligation of such a corporate contract; and that the act of July, 1862 (12 Stats. at Large, 501), which annulled that law granting the charter, is inoperative and unconstitutional; at least so far as the corporate power exercised prior to the annulling act has resulted in property or other rights to the corporation.

Your committee do not feel it necessary to go fully into all the questions which are germane to that before it for decision.

As preliminary to the discussion, the committee do not hesitate to express their dissent from the twelfth section of the Senate bill, the effect of which would be that the conduct of the corporate "Church of Jesus Christ of Latter-Day Saints" would be controlled by trustees of the church in conjunction with trustees appointed by the

President. This union of trustees of the church and those of the Government can not be distinguished from a union of church and state and "a law respecting the establishment of religion," nor can it be other than a limitation on the free exercise of religion when a majority who control in matters of faith and discipline are appointed by the President. This section would really resemble, if it be not in fact, an establishment of the Mormon Church by law, to be controlled by the Government.

Your committee recommend an annullment and dissolution of the corporation. This is clearly public policy, if it can constitutionally be done.

First. Its policy is shown from the enormous power of the corporation to increase its means and influence in the infant State. All the reasons which have induced the mortmain acts of the mother country, and all the evils which must follow unlimited power of the church to take and hold lands and other property, which evils are beginning to show themselves in our own country, should lead the legislative authority to look with jealousy on this tendency and to check it in its beginnings. Ecclesiastics clothed with property, which is so potential an influence in every State, would invade the province of the State as disastrously to religion and corruptly for the State as when the State invades the province of the church. And these reasons increase in force when, as in this case, the church has shown such an inherent tendency to control the State and master its fate.

But can Congress take away this charter? Several reasons make it clear that it can be done without any strained construction of authority:

(1) Both the charter of the church and of the Emigration Fund Company were null *ab initio* for lack of power, as has been pointed out.

(2) The acts confirming these null charters were probably ineffectual, because of the doctrine that what is void *ab initio* can not be confirmed, but only what is voidable.

(3) It is a matter of grave doubt whether the organic act authorized the original grant of such charters as these were.

(4) The organic act expressly provides that all laws passed by the Territorial legislature "shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect." This power whenever exercised, makes the original law null—not only hereafter, but "of no effect." If disapproval only nullifies its effect for the future, no force will be given to the last words.

But this power to annul is independent of the reservation of it in this act. (See *National Bank* v. *County of Yankton*, 101 U. S. Reports, 129.)

(5) The emigration fund act trenches upon the power of Congress as to foreign emigration, and assumes to regulate a matter neither delegated to it nor within its authority.

But both laws are unconstitutional; for, without going into the question *in extenso*, it is obvious it gives a preference to this form of religion over every other. None other is incorporated, and, much less, with such power to acquire property. So far from it, the legislature of Utah never passed any act for other religious sects until 1878, when a very inadequate law was passed allowing religious corporations no more real estate than is necessary for their purposes. (Acts 1878, p. 46.)

A law which discriminates thus in favor of one form of religion over another is in a proper sense "a law respecting the establishment of religion." It gives preference and advantage to one over another, which is of the essence of a church establishment. All must be equally free; none must have any advantage in privilege or right.

(6) But your committee can have no doubt that Congress, which possesses all original power over the Territories, and whose power is exercised only derivatively by the Territorial legislature, has the right to avoid the act

of its subordinate agency, and assert its own policy, without being bound in any degree by the act of the Territory.

With these views of the power of Congress your committee recommend to cut up by the roots this church establishment, with the Emigration Fund Company as its attachment, and to authorize judicial proceeding, under direction of the Attorney-General, for dealing with the property rights according to law and equity.

In fact, the Emigration Fund Company is dependent for its being upon the church. Its officers are appointed by the church corporation, and if the latter is dissolved its parasite can not survive.

No one can read the terms of the act incorporating the "Church of Jesus Christ of Latter-Day Saints" and fail to see that it is "a law respecting the establishment of religion." Its unlimited power to acquire property, its self-assertion of authority "in the Lord" over marriage and in the discipline of its members, and the specific reference to its peculiar creed, in the absence of like grant of privilege to other religious creeds, show the purpose of its authors, as well as the results of its existence, to be an establishment of the Mormon Church on a foundation of privilege denied or not granted to any other, and which, if unrepealed and unrepealable, would give it all the authority and influence in the infant State of an ecclesiastical establishment.

It has been argued before the committee that this is a private and not a public corporation, and hence would be irrepealable by State law, under the *Dartmouth College Case* (4 Wheaton R.), and is equally so by Congress.

No decision is known to your committee in which this limit has been applied to the authority of Congress. On the contrary, though in the legal-tender cases Congress was at first held to have no such power over contracts between private parties, yet finally the Supreme Court decided that it had. In the absence of any decision to the contrary, it would seem to be a corollary from this last

decision that if Congress could impair the obligation of a contract between A and B, it would not be forbidden to do so in regard to a contract between the Government and an individual, however contrary to the public policy it might be.

But your committee are not willing to concede that these corporations are private corporations only.

(1) There are no stockholders and no persons definitely entitled to the property. The members of the church are interested in it, but only as long as they are members. When they cease to be such they have no assignable interest. This shifting right, dependent on matters of faith, belongs to that class of indefinite uses which in England pre-existed, but were established by the statute of 43d Elizabeth, under the name of charities. (Vidal *vs.* Philadelphia, 2 How., 127.)

In some of the States gifts to these indefinite uses have been held void. (Atty. Gen. *vs.* Gallego, 3 Leigh R. [Va.]; Hart *vs.* Baptist Association (4 Wheaton R., 1), and cases referred to).

(2) But there is another principle involved here. Though this law had chartered a church and created stock interest in its property, yet nothing can bar the right of this Government, with a proper saving of these property interests, from disincorporating it in so far as it has powers which are political in their nature and create an institution which in other countries has been, and might become here, a powerful agency in its influence over the body-politic or over the functions of the Government itself.

It can not be denied that a law looking to what the Constitution defines as "respecting the establishment of religion," though it vested the religious functions in a stock corporation, would be none the less void to that extent and repealable by Congress. This charter erects this church into an institution of the body-politic, gives it perpetuity, and indefinite power to acquire, genera-

tion by generation, property in the Territory, and thus finally, as other churches have done in other countries, to gather such a force and influence as to govern the commonwealth which gave it existence.

The duty of Congress to prevent such an institution to be established in the young State, as a means of preventing its growth to that stature at which admission to the Union will be desirable to the country, can not be doubted.

Your committee, therefore, while proposing to disestablish the church and to dissolve both corporations, has provided for a judicial settlement of all rights of property according to law and equity.

The seventeenth section of the committee's bill (a new one) gives the right of review of any judgment of the court of the Territory in all criminal cases under this act and that of March 22, 1882, and of any judgment and decree under the sixteenth section of this act in dissolving and disposing of the property of these corporations. This conserves the rights of all under the decision of the highest court in the Union.

14464——6

(20)

May 23/90 Petition for rehearing.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

The Late Corporation of the Church of Jesus Christ of Latter Day Saints
vs.
The United States.
No. 1031.

George Romney et al.
vs.
The United States.
No. 1054.

PETITIONS FOR REHEARING.

J. E. McDONALD,
Attorney for Appellants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *vs.* THE UNITED STATES.	No. 1031.
GEORGE ROMNEY *et al.* *vs.* THE UNITED STATES.	No. 1054.

The appellants in the above-entitled causes, under the rules of this court, submit their petition for rehearing, and assign the following causes therefor:

First.

If it shall be finally determined that Congress possessed the power to pass the act of March 3, 1887, disincorporating the "Church of Jesus Christ of Latter-Day Saints," and that said incorporation thereby became dissolved, the decree of the court below is unauthorized by said act of March 3, 1887, under which it professes to have been entered.

By Section 17 of said act, after annulling the legislation for the incorporation of the "Church of Jesus Christ

of Latter-Day Saints," and declaring that said corporation was thereby dissolved, it was provided that the Attorney-General of the United States should take such proceedings in the Supreme Court of the Territory of Utah as should be proper to execute the foregoing provisions of this section, and to wind up all affairs of said incorporation conformably to law. But nowhere is any authority conferred upon the Supreme Court of the Territory of Utah to take cognizance of any suit or suits that might arise out of the provisions of the third section of the act of July 1, 1862, relating to the acquisition and holding of real estate by religious corporations within the Territories of the United States. On the contrary, by the thirteenth section of the act of March 3, 1887, it was made the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of Section 3 of said act of July 1, 1862, and in the findings of facts it is stated that such proceedings had been instituted and were pending in the proper district courts of the United States within said Territory, by informations filed on behalf of the United States.

But notwithstanding that fact, found in the findings of fact, the court below proceeded to adjudge and decree that all of the real estate set out in the findings of fact was the property of and belonged to the late corporation of the "Church of Jesus Christ of Latter-Day Saints," and the same was held in trust for said corporation, and, furthermore, that the legal title to said real estate, and every part and parcel thereof, had been acquired by said late corporation and its trustees subsequently to July 1, 1862, and that prior to said date neither said corporation nor its trustees had any legal title or estate in and to said real estate or any part thereof, and that none of said real estate except block 87, in plat A in Salt Lake City, known

as Temple Block, had ever been used as buildings, or grounds appurtenant thereto, for the purpose of worship of God, or of parsonages connected therewith, or for burial grounds by the said late corporation of the "Church of Jesus Christ of Latter-Day Saints," nor was said real estate, except that part known as the Temple Block, necessary for such purposes by the incorporated religious sect known as the "Church of Jesus Christ of Latter-Day Saints." Thus adjudging and decreeing against the appellants the questions involved in the several informations pending in the district courts of said Territory.

Second.

It is nowhere provided in any act of Congress relating to the "Church of Jesus Christ of Latter-Day Saints," or the church property held by church corporations in the Territories of the United States, that any of such property should be forfeited and escheated to the United States except the real estate held in violation of the third section of the act of 1862, and by the thirteenth section of the act of March 3, 1887, the property which shall have been declared to have escheated to the United States, under the provisions of the first-named act, shall be disposed of by the Secretary of the Interior and the proceeds applied to the use and benefit of common schools in the Territory in which such property may be. This property was not before the court except as it had taken the same into temporary custody by its receiver, but the personal property of the Church which had been held and administered by the said corporation for the use and benefit of the Church, and which the law did not attempt to declare forfeited, is by the decree of the court below held to have escheated by operation of law, and to have become the property of the United States, subject "to the

costs and expenses of this suit and of the receivership by said court instituted and ordered."

That Congress did not intend by the legislation in question to interfere with church property any further than to appropriate and apply that which might have been acquired in violation of the third section of the act of 1862, is strongly supported by the fact that in the act of March 3, 1887, which undertakes to deal with it, another corporation organized to aid in the affairs of the appellants, known as the Emigrants' Aid Society, is dissolved, and its property, after the settlement of its affairs, is confiscated and applied to the support of common schools within the Territory, but with respect to the personal property of the church the same does not seek in any manner to confiscate or appropriate it, being content to deprive the church of the aid of the corporation in its administration. This lingering regard for religious liberty, as guaranteed by the Constitution of the United States, which Congress evinced was totally disregarded by the court below in the decree entered in this case by sweeping all of the personal property of the church into the ownership and possession of the United States, except what was necessary to pay court costs and receivers' fees.

The ground upon which this declaration of forfeiture is made, as stated in the decree, is that there did not exist after the dissolution of said corporation of the "Church of Jesus Christ of Latter-Day Saints" any natural person or any body, association or corporation, who were legally entitled to any portion of said personalty as successors in interest to said corporation of the "Church of Jesus Christ of Latter-Day Saints." "Nor had there been, nor was there now, any trust of a definite or legal character upon which the said court, sitting as a court of chancery, can administer the personal property herein-

before set out." Thus the decree vests this personal property in the United States absolutely and not as trustee for the execution of some "kindred trust."

The statement of the decree that there did not exist at the date of the dissolution of said corporation any natural persons or any body, association, or corporation who were legally entitled to any portion of said personalty as successors in interest of the "Church of Jesus Christ of Latter-Day Saints" is contradicted by the findings of fact, and also by that part of the decree by which the so-called Temple Block is "set apart to the voluntary religious worshipers and unincorporated sect and body known as the 'Church of Jesus Christ of Latter-Day Saints,'" and confirmed to the trustees of said church in said decree named for the benefit "of said voluntary religious worshipers and unincorporated sect and body, and for the erection and use of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect and body," and thus recognizing the right of succession of the church in the real estate held by the corporation for its use as far as the same may be necessary for purposes of public worship, but denying to the same chuch the use and benefit of any portion of its personal property on the assumption that it has no right as successor in interest to such property. The "Church of Jesus Christ of Latter-Day Saints" is recognized as a voluntary religious unincorporated sect, entitled to enjoy the use of real estate in connection with their worship, but denied the right of holding personal property that may be essential for that purpose. In other words, this same church may hold and enjoy real property upon which to erect houses of worship, and teach therein the doctrines and tenets of their church, but can not hold or enjoy personal property donated by its members for religious and charitable purposes, dispensed by

it in accordance with the same doctrine and tenets of the church thus taught in its house of public worship.

In this respect the decree goes very far beyond the scope or purpose of the Act of Congress under which it is claimed to have been entered, and is, in our judgment, violative of that provision of the Constitution which declares that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.

Disguise it as you may, the decree in this case by confirming to the "Church of Jesus Christ of Latter-Day Saints" their real property used for church purposes, but confiscating their personal property, intended for similar use, is a confiscation of property on account of the religious belief of the parties who contributed it to the church for religious and charitable uses connected with the said doctrines and tenets of their church.

The decree which confiscated all of the personal property held by the church corporation at the time of its dissolution for the use and benefit of the "Church of Jesus Christ of Latter-Day Saints," and vests the title thereof absolutely in the United States, would authorize the seizure and confiscation of any property subsequently acquired by the church.

Third.

The petitioners regret that they have been unable to obtain a copy of the opinion of the court in time to enable them to give it that careful consideration to which it is entitled and the importance of the case demands, although they have been aided in this respect by Mr. Justice Bradley, who had prepared and delivered the opinion, as far as it was in his power to do so. It was not until 8 o'clock on the evening of the 22d that the same was received with

the injunction that it must be returned to Mr. Justice Bradley within five hours.

We shall not now do more than restate our objections as contained in the briefs filed on behalf of the appellants to the validity of the legislation in question. So far as we have been able to examine the opinion rendered, it has failed to convince us that the positions then assumed were not correct.

With respect to so much of the opinion as attempts to justify the decree rendered in this case on the ground that the personal property seized and confiscated by that decree is subject to the doctrine of charities, and to be administered, not for the charitable purposes for which its donors intended it, but for kindred charities, has no foundation whatever to rest upon in the facts found or decree rendered in this case.

The opinion admits that the personal property has not been declared forfeited by the Act of March 3, 1887, or by any other Act, and treats the present condition of that property, as shown in the decree, as the result of the dissolution of the church corporation and awaiting final disposition of the court, while the decree itself, as we have already shown, declared it "to be the property of the United States of America," subject only to the costs and expenses of this proceeding and of the receivership, and an order for its sale would necessarily result in covering its proceeds into the Treasury of the United States as a part of its general fund.

The objection the petitioners have to this decree, assuming that the act above referred to dissolved the corporation, is that while it recognizes that the corporation was but the trustee of the "Church of Jesus Christ of Latter-Day Saints," and held its property in trust, it fails to recognize the principle that the dissolution of that corporation for any cause, necessarily and legally reinvested

the church with the property, there is nothing in this act to the contrary, or to show that it was the intent of the act that a contrary result should take place, and, therefore, we have insisted that the decree was unauthorized by the law under which it was claimed to have been entered.

The opinion affirming this decree seems to us to be at variance with the decree itself. The learned justice, in speaking of this branch of the case, uses the following language:

"The rights of the church members will necessarily be taken into consideration in the final disposition of the case. There is no ground for granting their present application. The property is in the custody of the law awaiting the judgment of the court as to its final disposition."

Whereas the decree has already vested it absolutely in the United States of America, and on the affirmance of this decree the United States becomes the absolute owner of the personal property, and this is also the effect of the decree in respect to the real property about which suits are still pending on the law side of the Third District Court of Utah. The opinion of the learned justice in speaking of this proceeding says:

"In the proceedings which have been instituted in the District Court of the Territory it will be determined whether the property of the corporation, which has been seized, has or has not escheated or become forfeited to the United States."

Whereas the decree adjudged that the legal title to all of the real estate had been acquired since the passage of the Act of July 1, 1862, relating to the ownership of real estate by church corporations in the Territories of the

United States, and that such real estate was in excess of the sum of fifty thousand dollars.

The petitioners, therefore, insist that the unqualified affirmance of the decree, without modification or direction in respect to the final disposition of the property or as to its force and effect, so far as it may refer to the titles of the real estate now involved in the suits still pending in the Territorial courts, that it will operate to foreclose all questions relating to the further disposition of this property, and would prevent church members from ever deriving any benefit whatever or asserting any rights in respect to said property, either real or personal.

All of which is respectfully submitted, in the earnest hope that this honorable court will grant this petition and give a rehearing in these causes, and as in duty bound they will ever pray.

THE LATE CORPORATION OF THE
"CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS" and others,
and
GEORGE ROMNEY and others,
By JOS. E. MCDONALD and JOHN C FAY,
Their Attorneys.

We, Jos. E. McDonald and John C. Fay, attorneys, representing the appellants in the petition for rehearing herein, certify that said petition was prepared by us for said appellants, and that we believe the grounds of objection to the opinion and judgment of the court rendered in said cases, as therein stated, are well taken, and that said causes ought to be reheard, as in said petition prayed.

JOS. E. MCDONALD.
JOHN C. FAY.

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Jany 6/90. Motion to dismiss
Jany 11/90. Granted for the reasons stated.

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Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1224.

THE CORNELL UNIVERSITY AND DOUGLASS BOARDMAN, as Executor, &c., of John McGraw, Deceased, and Jennie McGraw Fiske, Deceased, Plaintiffs in Error,

against

WILLARD FISKE AND OTHERS, Defendants in Error.

To the Supreme Court of the United States:

The petition of the Cornell University and Douglass Boardman, as executor of the last wills and testaments of John McGraw, deceased, and Jennie McGraw Fiske, deceased, respectfully shows—

That this action comes to this Court upon writ of error from the supreme court of the State of New York; that said action is a matter of public concern, because the Cornell University is the legatee of the fund in controversy, and because the Cornell University is the college organized under the laws of the State of New York in conformity with an act of Congress of July 2, 1862, which provided that public lands be donated to the States and Territories which might provide colleges for the benefit of agriculture and mechanics, and is endowed, supported, and maintained by

the income from the fund arising from the sales of such lands or land scrip given to the State of New York under said act; that John McGraw died on the 4th day of May, 1877, leaving an estate of over two millions of dollars, and that Douglass Boardman was appointed his executor, and afterwards, on the 30th day of September, 1881, Jennie McGraw Fiske, daughter of said John McGraw and the owner of most of the property left by him, died, leaving a very large estate, and said Douglass Boardman was also appointed her executor; that this litigation was begun early in the year 1882, and the settlement of the two estates has been delayed by such litigation and will be delayed until the final decision of this Court.

That it would be a great misfortune to all parties to the litigation to have a further delay of several years in reaching the case in this Court in its regular order upon the calendar.

That your petitioner, Douglass Boardman, is one of the plaintiffs in error in this action, and respectfully prays the Court to advance the case to such early and reasonable time as the Court may select for a hearing.

Dated December 28th, 1889.

DOUGLASS BOARDMAN,
As Executor aforesaid.

STATE OF NEW YORK, }
County of Tompkins, } *ss:*

Douglass Boardman, one of the above-named petitioners, being duly sworn, says that the above petition subscribed by him is true to his own knowledge.

D. BOARDMAN.

Sworn to before me this 28th day of December, 1889.

[SEAL.] J. L. BAKER,
Notary Public.

SUPREME COURT OF THE UNITED STATES.

THE CORNELL UNIVERSITY and DOUGLASS BOARDMAN, as Executor, &c., of John McGraw, Deceased, and Jennie McGraw Fiske, Deceased, Plaintiffs in Error,
against
WILLARD FISKE and Others, Defendants in Error.

And now comes into Court the said plaintiffs in Error, The Cornell University and Douglass Boardman, as executor of the last wills of John McGraw, deceased, and Jennie McGraw Fiske, deceased, and moves that the above-entitled action be advanced upon the calendar of this Court and fixed for argument at such reasonable time as the said Court shall direct.

S. D. HALLIDAY,
Attorney for Plaintiffs in Error.

Due and timely service of the foregoing petition and notice for the 6th day of January, 1890, at the opening of the Court on that day, is hereby admitted.

ESEK COWEN,
Attorney for Defendants in Error.

Endorsed: Supreme Court U. S., 1889, October term. No. 1224. The Cornell University *et al.*, pl'ffs in error, *vs.* Willard Fiske *et al.* Petition and motion to advance, with proof of service. Office Supreme Court U. S. Filed Jan. 4, 1890. James H. McKenney, clerk.